



# JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY  
ADVISORY COMMITTEE

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## JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

### MINUTES OF OPEN MEETING

November 17, 2016  
10:00 AM – 11:00 PM

Teleconference

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**Advisory Body Members Present:** Hon. Louis Mauro, Chair; Hon. Peter Siggins; Mr. Jorge Navarrete; Mr. Kevin Green, Ms. Kimberly Stewart, and Mr. Don Willenburg.

**Advisory Body Members Absent:** Mr. Joseph Lane

**Others Present:** Ms. Katherine Sher, Ms. Heather Anderson, Mr. Patrick O'Donnell, Ms. Andrea Jaramillo and Ms. Julie Bagoye

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### OPEN SESSION

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#### Call to Order and Roll Call

Justice Mauro called the meeting to order at 10:00 AM, and roll call was taken. He noted there were no public comments received prior to this meeting.

#### Approval of Minutes

The subcommittee reviewed and approved the minutes of the February 11, 2016, and June 30, 2016, Joint Appellate Technology Subcommittee (JATS) meeting.

#### Item 1 Rules Proposals

Justice Mauro began the discussion by noting that all of the appellate courts now have mandatory e-filing except the Second District Court of Appeal, which may begin optional e-filing in December 2016 and mandatory e-filing in January 2017, and the California Supreme Court, which may begin e-filing in the spring of 2017. Justice Mauro further noted that when JATS developed the Rules Modernization, Phase 2 and Rules-Practice Consistency proposals in 2016, JATS deferred some items because not all appellate courts had implemented e-filing.

Justice Mauro asked whether JATS should move forward on the deferred items or wait until the Second District and Supreme Court have implemented e-filing.

Justice Siggins noted that attorneys are familiar with requirements such as bookmarking and suggested that JATS move forward. Justice Mauro asked whether Justice Siggins was proposing that JATS move forward on all the proposed items. Justice Siggins asked for clarification of the fifth item regarding formatting of reporters' transcripts. Justice Mauro explained that because a legislative proposal failed to advance in 2016, the Appellate Advisory

Committee will meet SEIU and the California Court Reporters Association to try again, hopefully resulting in legislation that would be enacted in the 2017 legislative session.

Ms. Sher noted that to complete rules proposals this year, the proposals would need to be prepared on a shortened schedule so that RUPRO could consider them in early February. The proposals would need to be considered by ITAC and the Appellate Advisory Committee in January, and JATS would have to complete its work in December.

Justice Mauro noted that in light of the holidays and the change in staff for JATS, it was unlikely such an expedited schedule could be accomplished. He suggested that JATS move the items forward on a two year schedule, with the understanding that some items might move forward sooner. JATS approved this two year plan.

## **Item 2 Other Projects**

JATS then discussed the non-rules projects described in the meeting materials. Mr. Green asked whether the privacy policy item would also be on a two-year schedule. Mr. Green said the issue of setting rules for e-filing of sealed and confidential documents (rule item number 3) is important, and he asked how much overlap there was between the work of the Appellate Advisory Committee's privacy subcommittee and the privacy policy project. Ms. Anderson noted that the privacy subcommittee is mostly addressing privacy issues regarding information in appellate opinions, but the privacy policy project before JATS may be broader, encompassing privacy issues in all documents e-filed in appellate courts. Mr. Greene said the privacy subcommittee has discussed the privacy of information in briefs. Ms. Stewart noted that issues involving sealed and confidential documents seem different from privacy issues in non-sealed, non-confidential filings. Ms. Anderson said there is some overlap, but the setting of privacy policies is intended by the ITAC working group to be a non-rules project.

Justice Mauro expressed his understanding that with all the non-rules projects, other groups will be taking the lead and asking JATS for input. Justice Siggins said the ITAC Rules and Policy Subcommittee would be working on the privacy policies and as Chair of that subcommittee, he is waiting for new subcommittee members to be named.

Justice Mauro suggested one additional non-rules item: monitoring of the Document Management System procurement and implementation by the appellate courts. Justice Mauro said such a system will be significant for the appellate courts, and JATS should receive reports and provide input as the Document Management System project moves forward.

JATS agreed that all of the rule and non-rule items described in the meeting materials, with the addition of the Document Management System item, be included on JATS's annual agenda as two year projects for 2017 and 2018.

## **A D J O U R N M E N T**

The meeting was adjourned at 10:38 AM.

**LEG 17-01**

**Title of proposal** (Legislation: Authorization for Fees for Electronic Filing and Service in the Appellate Courts)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>[Proposed] Committee Response</b>
1.	California Appellate Court Clerks Association (CACCA) by Daniel P. Potter, President San Jose, CA	A	The Clerks Association agrees with the proposed amendments to the Government Code sections. The proposed changes to address the goals of the legislation as well as the appropriate fee revenue distributions.	The Clerks Association’s support for the proposed amendments is duly noted.
2.	Family Violence Appellate Project (FVAP) by Erin Smith San Francisco	AM	<p>Purpose: The Administrative Presiding Justices Advisory Committee proposes amending the statutes relating to appellate court fees to clarify that an appellate court’s electronic filing service provider may charge a reasonable fee for its services, to allow an appellate court to contract with its electronic filing service provider to receive a portion of the fees collected by that provider and to authorize the appellate courts to charge a fee to recover costs incurred for providing electronic filing. Persons entitled to fee waivers would not be subject to any of the fees provided for in this proposal.</p> <p>[Responses to specific questions]:            Do the proposed statutory changes achieve the goals of the legislation? <b>Yes</b>            Are the distributions of fee revenues in amended sections 68930 and 68933 the appropriate distributions? <b>Yes</b>            Do any other statutory changes regarding appellate court fees for electronic filing and service need to be made as part of this proposal?  <b>No</b></p> <p>Recommendation: FVAP supports this proposed</p>	<p>The Family Violence Appellate Project (FVAP) comment accurately summarizes the legislative proposal.</p> <p>The committee appreciates the responses to the specific questions asked in the invitation to comment.</p> <p>The committee notes FVAP’s general support for</p>

**LEG 17-01****Title of proposal** (Legislation: Authorization for Fees for Electronic Filing and Service in the Appellate Courts)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>[Proposed] Committee Response</b>
			<p>legislation, and writes to specify that such support is conditional on the exemption proposed in Government Code section 68930(b), for people entitled to fee waivers, remaining in the bill. Such exemption will ensure equal access to the appellate courts for the state's low-income residents.</p> <p>In addition, FVAP would like to see this exemption expanded to include nonprofits and private attorneys representing parties pro bono. Such a rule would ensure access to justice for low-income litigants, who are often reliant on pro bono representation by private attorneys and/or nonprofit organizations to present their cases competently; encourage more pro bono and nonprofit appellate representation, providing better access to justice at the appellate level; and limit the financial burden on nonprofits with limited resources. Specifically, section 68930(b) could be amended to read: (b) The fees authorized under (a)(1) and (a)(2) shall not be charged to any party who has been granted a fee waiver; to any attorney representing a party pro bono; or to any nonprofit organization representing a party.</p>	<p>the proposed legislation.</p> <p><b>(COMMENT TO BE DISCUSSED)</b></p>
3.	Superior Court of San Diego County by Mike Roddy	A	No specific comment.	No response required.
4.	State Bar of California, Litigation Section Committee on Appellate	A	Do the proposed statutory changes achieve the goals of the legislation? <b>Yes</b>	The committee appreciates the responses to the specific questions asked in the invitation to

**LEG 17-01**

**Title of proposal** (Legislation: Authorization for Fees for Electronic Filing and Service in the Appellate Courts)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>[Proposed] Committee Response</b>
	Courts Comment on Behalf of Org. By Paula Mitchell Los Angeles		<p>Are the distributions of fee revenues in amended sections 68930 and 68933 the appropriate distributions? <b>Yes</b></p> <p>Do any other statutory changes regarding appellate court fees for electronic filing and service need to be made as part of this proposal? <b>No</b></p> <p>Our Recommendation: The Committee on Appellate Courts supports this proposed legislation, and write to specify that such support is conditional on the exemption proposed in Government Code section 68930(b), for people entitled to fee waivers, remaining in the bill. Such exemption will ensure equal access to the appellate courts for the state’s low-income residents.</p> <p>In addition, to further the purpose of ensuring to access to justice for low-income litigants, who are often reliant on court-appointed attorneys, pro bono private attorneys, and/or nonprofit organizations to present their cases competently; we would encourage the committee to consider expanding this exemption to include certain categories of attorneys who are ensuring that California’s low-income residents have access to justice in the appellate courts.</p>	<p>comment.</p> <p>The committee notes the Litigation Section’s general support for the proposed legislation.</p> <p><b>(COMMENT TO BE DISCUSSED)</b></p>

**LEG 17-01****Title of proposal** (Legislation: Authorization for Fees for Electronic Filing and Service in the Appellate Courts)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>[Proposed] Committee Response</b>
5.	Orange County Bar Association by Michael L. Baroni	A	No specific comment.	No response required.



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: November 17, 2017

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Title

Judicial Council–Sponsored Legislation:  
Authorization for Fees for Electronic Filing  
and Service in the Appellate Courts

Rules, Forms, Standards, or Statutes Affected  
Amend Government Code sections 68929,  
68930, and 68933

Recommended by

Administrative Presiding Justices Advisory  
Committee

Agenda Item Type

Action Required

Effective Date

January 1, 2019

Date of Report

May 24, 2017

Contact

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### Executive Summary

The Administrative Presiding Justices Advisory Committee recommends that the Judicial Council sponsor legislation to amend the Government Code sections relating to appellate court fees (1) to clarify that an appellate court's electronic filing service provider may charge a reasonable fee for its services, (2) to allow an appellate court to contract with its electronic filing service provider to receive a portion of the fees collected by that provider, and (3) to authorize the appellate courts to charge a fee to recover costs incurred for providing electronic filing. Persons entitled to fee waivers would not be subject to any of the fees provided for in the legislation.

### Recommendation

The Administrative Presiding Justices Advisory Committee recommends that the Judicial Council sponsor legislation to:

1. Amend Government Code section 68930 to add new subdivisions (a)(1)–(2) and (b) to Government Code section 68930. New subdivision (a)(1) would provide that a court of appeal that contracts with an electronic filing service provider to furnish and maintain an electronic filing and service system may allow the provider to charge electronic filers a reasonable fee in addition to the court’s filing fee. New subdivision (a)(2) would provide that a court of appeal that contracts with electronic filing service providers to furnish and maintain an electronic filing and service system may charge a fee to recover its costs. And new subdivision (b) would provide that the fees authorized under (a)(1)–(2) shall not be charged to any party who has been granted a fee waiver.

2. Amend Government Code section 68929 to relocate the provision for the fee for certification, which is currently in section 68930, to become subdivision (a) of section 68929 and move the current provisions in section 68929 on the fee for comparing documents to become subdivision (b) of that section.

3. Amend Government Code section 68933, which establishes the Appellate Court Trust Fund and identifies the fees collected by the Courts of Appeal and Supreme Court that are to be deposited in that fund, to specify that any fee revenue from amended section 68930(a)(1) shall be placed in the fund.

The text of the legislation is attached at page 6.

### **Previous Council Action**

The Judicial Council adopted rules for electronic filing and service in the Supreme Court and courts of appeal in 2010. (See Cal. Rules of Court, rules 8.70–8.79.) Those rules have been amended two times.

### **Rationale for Recommendation**

Courts of Appeal and the Supreme Court are in the process of instituting electronic filing and service, which will improve access to the courts and expedite business processes at a time when the development of e-filing is moving forward rapidly. Currently, e-filing is mandatory in five of the six appellate districts and the deployment of e-filing in the Supreme Court is scheduled for July, 2017.

To help finance the full implementation of electronic filing, statutory changes are needed to clarify the authority of the vendor and the courts to collect fees for these services. Fees in the Supreme Court and the Courts of Appeal are the subject of Article 4 of Chapter 3 of Title 8 of the Government Code (sections 68926–68933). This proposal would amend three of the fee statutes in that article. The principal amendments are described below.

**Government Code section 68930**

The main proposed changes to the fee statutes would be to add new subdivisions (a)(1)–(2) and (b) to Government Code section 68930.

*Proposed paragraph (1) of subdivision (a).* In California, a central feature of the e-filing systems used by the appellate and trial courts is the reliance on electronic filing service providers (EFSPs) to enable parties to file their documents electronically with the courts. EFSPs assist filers not only in preparing and transmitting documents to the courts but also in electronically serving these documents on other parties in the case. For providing these services, the EFSPs expect to be, and are, paid. The system would not operate without such compensation.

The California Rules of Court on electronic filing and service recognize this situation. Appellate rule 8.73(b) provides, in part: “The court’s contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court’s filing fee.” The same provision appears in the trial court rules. (See rule 2.255(b).)

For the trial courts, the rule providing for a reasonable fee is also reflected in a statute. (See Code Civ. Proc., § 1010.6(d)(1)(B), which provides, in part: “Any fees charged by an electronic filing service provider shall be reasonable.”) The appellate courts presently have no equivalent statutory provision. Because the Judicial Council has the authority to adopt rules provided they are not inconsistent with statute and there is no statute on this subject, the appellate rule allowing providers to charge reasonable fees is legally sufficient. However, even though a statute expressly addressing the issue of providers charging reasonable fees in the appellate courts is not necessary, to have such statutory authority for the appellate as well as the trial courts seems desirable.

This proposal therefore recommends amending Government Code section 68930 to include the following provision: “A court of appeal that contracts with an electronic filing service provider to furnish and maintain an electronic filing and service system may. . . [a]llow the provider to charge electronic filers a reasonable fee in addition to the court’s filing fee.” (See amended Government Code, § 68930(a)(1).)

In addition to codifying rule 8.73, this proposal recommends that section 68930(a)(1) allow the appellate courts to contract with the electronic filing and service providers to receive a portion of the fee revenues collected by the providers under that paragraph. Section (a)(1) would also specify that any revenue received by a court of appeal under that paragraph shall be remitted to the Appellate Court Trust Fund.

To ensure access for low-income persons, the statute would state that the fees authorized under (a)(1) shall not be charged to any party who has been granted a fee waiver. (Amended section 68930(b).)

**Proposed paragraph (2) of subdivision (a).** The institution of electronic filing imposes direct costs not only on the electronic filing service providers that assist the courts but also on the courts that are implementing e-filing. The new e-filing systems need to be integrated with the appellate courts' case management systems. Once developed and installed, the integrated e-filing processes must be operated, maintained, and updated. In addition to technology, costs for training, personnel, and other elements are associated with adopting electronic filing. To address these fiscal issues, section 68930 would be amended to include new subdivision (a)(2).

For the trial courts, the principal statute on electronic filing and service already includes express authority for the courts implementing e-filing to charge fees to recover their costs. (See Code Civ. Proc., § 1010.6(d)(1)(B).) Providing similar statutory authority for the appellate courts is appropriate. Hence, this proposal recommends amending Government Code section 68930 to include a provision that a court of appeal that contracts with electronic filing service providers to furnish and maintain an electronic filing and service system may “[c]harge a fee to recover its costs.” (See amended Gov. Code, § 68930(a)(2).) The statute would specify that the cost recovery fees shall be collected by the electronic filing service provider and remitted to the court.

Again, the statute would state that the fees authorized under (a)(2) shall not be charged to any party who has been granted a fee waiver. (See amended Gov. Code, § 68930(b).)

#### **Other statutory changes**

**Amended Government Code section 68929.** Currently, Government Code section 68929 concerns the fee for comparing documents requiring a certification. This fee is in addition to the fee for certification. Under this proposal, the provision for the fee for certification, which is currently in section 68930, would be relocated to become subdivision (a) of section 68929. The current provisions in section 68929 on the fee for comparing documents would become subdivision (b) of that section. These changes have the benefit of locating all the certification fees in a single section while providing a place in section 68930 for the new fee provisions described above.

**Amended Government Code section 68933.** Government Code section 68933, which establishes the Appellate Court Trust Fund and identifies the fees collected by the Courts of Appeal and Supreme Court that are to be deposited in that fund, would be amended to specify that any fee revenue from amended section 68930(a)(1) shall be placed in the fund.

#### **Comments**

This legislative proposal was circulated for public comment from February 28 through April 28, 2017. Five comments were received on the proposal. All the comments support the legislation, though two commentators recommend that certain additional provisions be added.

The two commentators that are recommending additional provisions were the Family Violence Appellate Project (FVAP) and the State Bar Litigation Section Committee on Appellate Courts (State Bar section). Both of these commentators state that they support the proposed legislation

and that this support is conditional on the exemption proposed for people in Government Code section 68930(b) for people entitled to fee waivers. This exemption will ensure equal access to the appellate courts for the state's low-income residents.

In addition, the two commentators recommend that this exemption should be expanded to include nonprofits representing parties and to private attorneys representing parties pro bono. This committee should discuss these recommendations and determine whether the expanded exemptions should be included in the final report presented to the Judicial Council.

### **Alternatives Considered**

One alternative to this legislative proposal would be to leave the law unchanged. In that event, appellate fee issues would continue to be addressed through rules and contracts. To provide greater certainty and transparency, the better option is to have legislation enacted that will clarify the law, provide express statutory authority for all the fees in this report, and specify how the fees collected are to be distributed.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposed legislation will require some implementation efforts. However, the legal clarity provided by the amended statutes should make it easier to identify, track, and distribute the fees collected

### **Attachments and Links**

1. Amended Government Code sections 68929, 689230, and 68933
2. Comment chart

Government Code sections 68929, 68930, and 68933 would be amended, effective January 1, 2019, to read:

**Government Code, § 68929.**

(a) The fee for each certificate under seal is one dollar (\$1).

(b) The fee for comparing any document requiring a certificate is five cents (\$0.05) a folio, except that when the document to be compared was printed or typewritten from the same type or at the same time as the original on file and has been corrected in all respects to conform with it, such charge shall be one cent (\$0.01) a folio. Such fee is in addition to the fee for the certificate.

**Government Code, § 68930.**

~~The fee for each certificate under seal is one dollar (\$1).~~

(a) A court of appeal that contracts with an electronic filing service provider to furnish and maintain an electronic filing and service system may do the following:

(1) Allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. The court may contract with the electronic filing service provider to receive a portion of the fee revenues collected by the provider under this paragraph. Any revenues received by the court of appeal pursuant to this paragraph shall be remitted to the Appellate Court Trust Fund.

(2) Charge a fee to recover its costs. The cost recovery fee shall be collected by the electronic filing service provider and remitted to the court.

(b) The fees authorized under (a)(1) and (a)(2) shall not be charged to any party who has been granted a fee waiver.

**Government Code, § 68933.**

(a) There is hereby established the Appellate Court Trust Fund, the proceeds of which shall be used for the purpose of funding the courts of appeal and the Supreme Court.

(b) The fund, upon appropriation by the Legislature, shall be apportioned by the Judicial Council to the courts of appeal and the Supreme Court as determined by the Judicial Council, taking into consideration all other funds available to each court and the needs of each court, in a manner that promotes equal access to the courts, ensures the ability of the courts to carry out their functions, and promotes implementation of statewide policies.

(c) Notwithstanding any other provision of law, the fees listed in subdivision (d) shall all be transmitted for deposit in the Appellate Court Trust Fund within the State Treasury.

(d) This section applies to all fees collected pursuant to Section 68926, excluding that portion subject to Section 68926.3; subdivision (b) of Section 68926.1; and Sections 68927, 68928, 68929, 68930(a)(1), and 68932.

(e) The Appellate Court Trust Fund shall be invested in the Surplus Money Investment Fund, and all interest earned shall be allocated to the Appellate Court Trust Fund semiannually and used as specified in this section.

AMENDED IN ASSEMBLY APRIL 20, 2017

AMENDED IN ASSEMBLY APRIL 6, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1450**

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**Introduced by Assembly Member Obernolte**

February 17, 2017

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An act to repeal and add Section 271 of the Code of Civil Procedure, relating to court reporters.

LEGISLATIVE COUNSEL'S DIGEST

AB 1450, as amended, Obernolte. Court reporters: electronic transcripts.

Existing law requires an official reporter or official reporter pro tempore of the superior court to take down in shorthand specified information regarding the testimony and proceedings before the court in civil cases, felony cases, and misdemeanor or infraction cases on order of the court, and in only civil cases or felony cases, at the request of a party or counsel. Existing law authorizes a court, party, or other person entitled to a transcript to request that it be delivered in computer-readable form, except as specified.

~~This bill would instead require that all transcripts be delivered in electronic format to any court, party, or person entitled to the transcript, as specified, unless the transcript is requested to be delivered in paper form, the court lacks the technical ability to accept an electronic transcript and has received advance approval from the Judicial Council to only accept a transcript in paper form, or, until January 1, 2020, an official reporter or official reporter pro tempore has not acquired the technology to submit a transcript in electronic form and has provided~~

~~advance notice of this fact. The bill would provide that a court or other entity is not allowed to require an official reporter or official reporter pro tempore to use a specific vendor or software.~~

*This bill would instead require an official reporter or official reporter pro tempore to deliver a transcript in electronic form, in compliance with the California Rules of Court, to any court, party, or person entitled to the transcript, as specified, unless, among other things, the party or person requests the transcript in paper form.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 271 of the Code of Civil Procedure is  
2 repealed.

3 ~~SEC. 2.~~ Section 271 is added to the Code of Civil Procedure,  
4 to read:

5 ~~271. (a) An official reporter or official reporter pro tempore~~  
6 ~~shall deliver a transcript in electronic form to any court, party, or~~  
7 ~~person entitled to the transcript, unless any of the following apply:~~

8 ~~(1) The party or person entitled to the transcript requests the~~  
9 ~~reporter’s transcript in paper form.~~

10 ~~(2) The court lacks the technical ability to accept an electronic~~  
11 ~~transcript and has received advance approval from the Judicial~~  
12 ~~Council to only accept the reporter’s transcript in paper form.~~

13 ~~(3) Until January 1, 2020, an official reporter or official reporter~~  
14 ~~pro tempore has not acquired the technology to submit a transcript~~  
15 ~~in electronic form and the official reporter or official reporter pro~~  
16 ~~tempore has provided advance notice of this fact to the court.~~

17 ~~(b) Except as specified in subdivision (e), a transcript delivered~~  
18 ~~in electronic format shall comply with the California Rules of~~  
19 ~~Court pertaining to the formatting of electronic transcripts.~~

20 ~~(e) (1) Until January 1, 2020, the requirements of the California~~  
21 ~~Rules of Court specifically relating to the electronic filing of~~  
22 ~~transcripts shall apply only if the official reporter or official~~  
23 ~~reporter pro tempore has the ability to comply with the~~  
24 ~~requirements. Commencing January 1, 2020, an official reporter~~  
25 ~~or official reporter pro tempore shall comply with the applicable~~  
26 ~~California Rules of Court.~~

1 ~~(2) Until January 1, 2020, an official reporter or official reporter~~  
2 ~~pro tempore using a format that is not compliant with the~~  
3 ~~requirements contained within the California Rules of Court~~  
4 ~~specifically relating to the electronic filing of transcripts may~~  
5 ~~electronically file transcripts upon approval by, or agreement with,~~  
6 ~~the court.~~

7 ~~(d) Nothing in this section changes any requirement set forth~~  
8 ~~in Sections 69950 and 69954 of the Government Code, regardless~~  
9 ~~of whether a transcript is delivered in electronic or paper form.~~

10 ~~(e) An electronic transcript delivered in accordance with~~  
11 ~~subdivisions (a) and (b) shall be deemed to be an original transcript~~  
12 ~~for purposes of any obligation of an attorney to maintain or deliver~~  
13 ~~a file for a client.~~

14 ~~(f) Nothing in this section shall be construed to require an~~  
15 ~~official reporter or official reporter pro tempore to use a specific~~  
16 ~~vendor or software to comply with this section, or to allow a court~~  
17 ~~or other entity to require an official reporter or official reporter~~  
18 ~~pro tempore to use a specific vendor or software. An official~~  
19 ~~reporter or official reporter pro tempore may select the appropriate~~  
20 ~~technology to comply with this section.~~

21 *SEC. 2. Section 271 is added to the Code of Civil Procedure,*  
22 *to read:*

23 *271. (a) An official reporter or official reporter pro tempore*  
24 *shall deliver a transcript in electronic form, in compliance with*  
25 *the California Rules of Court, to any court, party, or person entitled*  
26 *to the transcript, unless any of the following apply:*

27 *(1) The party or person entitled to the transcript requests the*  
28 *reporter's transcript in paper form.*

29 *(2) If, prior to January 1, 2020, the court lacks the technical*  
30 *ability to use or store a transcript in electronic form pursuant to*  
31 *this section, the transcript may instead be delivered, upon request,*  
32 *in full text-searchable portable document format (PDF) or other*  
33 *searchable format approved by the court if the proceedings were*  
34 *produced utilizing computer-aided transcription equipment.*

35 *(3) If, prior to January 1, 2020, the official reporter or official*  
36 *reporter pro tempore lacks the technical ability to deliver a*  
37 *transcript in electronic form pursuant to this section and provides*  
38 *advance notice of this fact to the court, party, or person entitled*  
39 *to the transcript, the transcript may instead be delivered, upon*  
40 *request, in full text-searchable portable document format (PDF)*

1 *or other searchable format approved by the court if the proceedings*  
2 *were produced utilizing computer-aided transcription equipment.*

3 *(b) Nothing in this section changes any requirement set forth*  
4 *in Section 69950 or 69954 of the Government Code, regardless*  
5 *of whether a transcript is delivered in electronic or paper form.*

6 *(c) An electronic transcript delivered in accordance with this*  
7 *section shall be deemed to be an original transcript for all*  
8 *purposes, including any obligation of an attorney to maintain or*  
9 *deliver a file to a client.*

10 *(d) An electronic transcript shall comply with any format*  
11 *requirement imposed pursuant to subdivision (a). However, an*  
12 *official reporter or official reporter pro tempore shall not be*  
13 *required to use a specific vendor or software to comply with this*  
14 *section, unless the official reporter or official reporter pro tempore*  
15 *agrees with the court, party, or person entitled to the transcript*  
16 *to use a specific vendor or software. Absent that agreement, an*  
17 *official reporter or official reporter pro tempore may select the*  
18 *technology to comply with this section and the California Rules*  
19 *of Court.*

# Judicial Council of California

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[www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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## INVITATION TO COMMENT SPR17-02

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<b>Title</b>	<b>Action Requested</b>
Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form	Review and submit comments by April 28, 2017
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rule 8.144	January 1, 2018
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rule regarding the format of the record on appeal to incorporate requirements for reporters' transcripts that are delivered in electronic form. This proposal is based on a suggestion from a court reporters association.

### Background

Code of Civil Procedure section 271 authorizes courts and parties to receive, on request, copies of reporters' transcripts in "computer-readable form." Subdivision (b) of this statute establishes default standards for the format of such transcripts, but provides that these defaults apply "[e]xcept as modified by standards adopted by the Judicial Council."

Rule 8.144 generally addresses the format of the record on appeal, including the format of reporters' transcripts. Currently, this rule contains only the following provision regarding the format of computer-readable reporters' transcripts:

A computer-readable copy of a reporter's transcript must be in a text-searchable format approved by the reviewing court while maintaining original document formatting.

(Cal. Rules of Court, rule 8.144(a)(4).)

There are additional formatting issues and questions that arise when a transcript is in electronic format that it may be helpful for rule 8.144 to address.

*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.*

## **The Proposal**

The committee is proposing amendments to rule 8.144 to provide additional guidance regarding the format for reporters' transcripts that are delivered in electronic form. To make the overall rule clearer, the committee is also proposing reorganizing some of the existing provisions. The main amendments include:

- Current subdivisions (a), (b), and (c), which establish general formatting requirements for reporters' and clerks' transcripts, would be consolidated into a single subdivision (a), titled *Format*. This should make it easier for rule users to find all of the general formatting requirements. To make this longer subdivision easier to follow, each paragraph would be given a heading. This also preserves the most of the headings now used in subdivisions (b) and (c). In addition, a proposed new requirement that each index begin on a separate page would be placed here, as having each index begin on a separate page would be helpful in all transcripts, whether in paper or electronic form.
- The current provisions that specifically relate to transcripts that are in paper form would be gathered together in a new subdivision (b). This reorganization should make finding these specific formatting requirements easier.
- New subdivision (c) would address the specific requirements for reporters' transcripts in delivered in electronic form, including that the transcript be in a full-text searchable PDF or other searchable format approved by the court; include an electronic bookmark to each heading, subheading, and component of the transcript; and permit users to copy and paste, keeping the original formatting. This new subdivision would include separate paragraphs for both general requirements and special requirements for multireporter or multivolume transcripts that are in electronic format. As with proposed subdivisions (a) and (b), this structure should make it easier for rule users to find all of the requirements relating to reporters' transcripts delivered in electronic form in one place.

Other nonsubstantive changes to the rule are also incorporated in this proposal.

## **Alternatives Considered**

The committee considered not recommending any changes to rule 8.144 but concluded that providing more guidance on the format of reporters' transcripts in electronic form would be helpful.

## **Implementation Requirements, Costs, and Operational Impacts**

No appreciable implementation requirements, costs, or operation impacts are anticipated.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether it is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?

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

- 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 three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

Proposed amendments to Cal. Rules of Court, rule 8.144, at pages 4–8

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 2. Civil Appeals

6  
7 Article 2. Record on Appeal

8  
9 Rule 8.144. Form of the record

10  
11 (a) ~~Paper and~~ Format

12  
13 (1) General

14 In the clerk's and reporter's transcripts:

15  
16 (A) All documents filed must have a page size of 8½ by 11 inches. ~~If filed~~  
17 ~~in paper form, the paper must be white or unbleached and of at least 20-~~  
18 ~~pound weight;~~

19  
20 (B) The text must be reproduced as legibly as printed matter;

21  
22 (C) The contents must be arranged chronologically;

23  
24 (D) The pages must be consecutively numbered, except as provided in (e);  
25 and

26  
27 (E) The margin must be at least 1¼ inches from the left edge.

28  
29 ~~(2) If filed in paper form, in the clerk's transcript only one side of the paper may~~  
30 ~~be used; in the reporter's transcript both sides may be used, but the margins~~  
31 ~~must then be 1¼ inches on each edge.~~

32  
33 ~~(3)~~(2) Line numbering

34 In the reporter's transcript the lines on each page must be consecutively  
35 numbered and must be double-spaced or one-and-a-half-spaced; double-  
36 spaced means three lines to a vertical inch.

37  
38 ~~(4) A computer-readable copy of a reporter's transcript must be in a text-~~  
39 ~~searchable format approved by the reviewing court while maintaining~~  
40 ~~original document formatting.~~

1 ~~(5)~~(3) Sealed and confidential records

2 The clerk's and reporter's transcripts must comply with rules 8.45–8.47  
3 relating to sealed and confidential records.

4  
5 ~~(b)~~(4) Indexes

6 Except as provided in rule 8.45, at the beginning of the first volume of each:

7  
8 ~~(1)~~(A) The clerk's transcript must contain alphabetical and chronological  
9 indexes listing each document and the volume, where applicable, and  
10 page where it first appears;

11  
12 ~~(2)~~(B) The reporter's transcript must contain alphabetical and  
13 chronological indexes listing the volume, where applicable, and page  
14 where each witness's direct, cross, and any other examination, begins;  
15 and

16  
17 ~~(3)~~(C) The reporter's transcript must contain an index listing the volume,  
18 where applicable, and page where any exhibit is marked for  
19 identification and where it is admitted or refused. The index must  
20 identify each exhibit by number or letter and a brief description of the  
21 exhibit.

22  
23 (D) Each index required by (A), (B), and (C) must begin on a separate  
24 page.

25  
26 ~~(e)~~(5) **Binding and Cover**

27  
28 ~~(1) — If filed in paper form, clerk's and reporter's transcripts must be bound on the~~  
29 ~~left margin in volumes of no more than 300 sheets.~~

30  
31 ~~(2)~~(A) Each volume's cover must state the title and trial court number of  
32 the case, the names of the trial court and each participating trial judge,  
33 the names and addresses of appellate counsel for each party, the  
34 volume number, and the inclusive page numbers of that volume.

35  
36 ~~(3)~~(B) In addition to the information required by ~~(2)~~(A), the cover of each  
37 volume of the reporter's transcript must state the dates of the  
38 proceedings reported in that volume.

39  
40 **(b) Additional requirements for record in paper form**

41  
42 In addition to complying with (a), if the record is filed in paper form:

- 1           (1) The paper must be white or unbleached and of at least 20-pound weight;  
2  
3           (2) In the clerk’s transcript only one side of the paper may be used; in the  
4           reporter’s transcript both sides may be used, but the margins must then be 1¼  
5           inches on each edge.  
6  
7           (3) Clerks’ and reporters’ transcripts must be bound on the left margin in  
8           volumes of no more than 300 sheets.  
9

10 **(c) Additional requirements for reporter’s transcript delivered in electronic form**  
11

12           (1) General  
13

14           In addition to complying with (a), a reporter’s transcript delivered in  
15           electronic format must:  
16

- 17           (A) Be generated electronically; it must not be created from a scanned  
18           document.  
19  
20           (B) Be in full text-searchable PDF (portable document format) or other  
21           searchable format approved by the court.  
22  
23           (C) Be paginated beginning with the first page or cover page as page 1 and  
24           consecutively numbered using only Arabic numerals (e.g., 1, 2, 3)  
25           throughout the document, including indices and certificates. The  
26           electronic page counter in a PDF file viewer must match the transcript  
27           page numbering.  
28  
29           (D) Include an electronic bookmark to each heading, subheading, and  
30           component of the transcript, including all sessions or hearings (date  
31           lines), all witness examinations, the index, and all exhibits. All  
32           bookmarks and hyperlinks, when clicked, must retain the user’s  
33           currently selected zoom settings.  
34  
35           (E) Be digitally and electronically signed by the court reporter.  
36  
37           (F) Permit users to copy and paste, keeping the original formatting, but  
38           with headers, footers, line numbers, and page numbers excluded.  
39  
40           (G) Permit courts to electronically add filed/received stamps.  
41  
42

1           (2) Multivolume or multireporter transcripts

2  
3           In addition to the requirements in (1), multivolume or multireporter  
4           transcripts delivered in electronic format must comply with the following  
5           requirements:

6  
7           (A) Each individual reporter must include the cover page required by (a)(3),  
8           the indexes required by (a)(4), and a digitally and electronically signed  
9           certificate in its respective portion of the transcript.

10  
11           (B) The transcript must be merged into a single electronic document, which  
12           may consist of multiple volumes.

13  
14           (C) The primary reporter must prepare a master index for the merged  
15           transcript that includes all of the information from the indexes required  
16           under (A). This master index must be the first bookmark in the  
17           transcript, regardless of where the master index is located within the  
18           transcript.

19  
20           (3) Additional functionality or enhancements

21  
22           Nothing in this rule prohibits courts from accepting additional functionality  
23           or enhancements in reporters' transcripts delivered in electronic form.

24  
25           (d) \* \* \*

26  
27           (e) **Pagination in multiple reporter cases**

28  
29           (1) In a multiple reporter case, each reporter must estimate the number of pages  
30           in each segment reported and inform the designated primary reporter of the  
31           estimate. The primary reporter must then assign beginning and ending page  
32           numbers for each segment.

33  
34           (2) If a segment exceeds the assigned number of pages, the reporter must number  
35           the additional pages with the ending page number, a hyphen, and a new  
36           number, starting with 1 and continuing consecutively.

37  
38           (3) If a segment has fewer than the assigned number of pages, on the last page of  
39           the segment, before the certificate page, the reporter must add a hyphen to the  
40           last page number used, followed by the segment's assigned ending page  
41           number, and state in parentheses "(next volume and page number is \_\_\_\_)."  
42

1 (f) \* \* \*

2

3

**Advisory Committee Comment**

4

5 **Subdivision (a)(3) and (4)(b).** ~~Subdivision (a)(4) is adopted under Code of Civil Procedure~~  
6 ~~section 271(b), which allows the Judicial Council to adopt format requirements for computer-~~  
7 ~~readable copies of a reporter's transcript. Subdivisions (a)(5) Paragraphs (3) and (b)(4) of~~  
8 subdivision (a) refer to special requirements concerning sealed and confidential records  
9 established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establishes special requirements regarding  
10 references to sealed and confidential records in the alphabetical and chronological indexes to  
11 clerks' and reporters' transcripts.

12

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### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Dana Belloli Official Court Reporter Turlock Ca	N	Having been a working reporter for the past 30 years, both freelance and official, I believe this proposal is bad law. It will require additional costs to working reporters to be paid to software company(s), with no benefit to the public. Court reporters can already provide the services presently required, and the only benefit will be to these people/company(s) who court reporters will be required to pay a monthly fee to. It will especially adversely effect those reporters who work part-time yet still must pay the month fee as required by these software company(s). Thank you.	
2.	California Appellate Court Clerks Association by Daniel P. Potter, President	A	The Clerks Association agrees with amending of rule 8.144 as proposed with one addition. That the rule requires that transcripts submitted by court reporters not be password protected.  To the advisory committee's questions:  <i>It is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?</i>  It doesn't seem necessary to require both. Digital signatures obviously offer more protection for the court reporters, but depending on the digital certificates being used for the digital signature and the encryption level, it might make things more difficult for the court in terms of electronically filing, flattening and encrypting (in the case of sealed electronic	

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### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>documents) than if those documents had just been electronically signed. It seems like requiring electronic signatures might be the least cumbersome option for the courts.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p>	
3.	California Court Reporters Association By Brooke Ryan and Erin Spence	NI	<p>On behalf of California's court reporters, the California Court Reporters Association ("CCRA") wishes to thank the Judicial Council and the Appellate Advisory Committee for proposing these important amendments to California Rules of Court, rule 8.144. CCRA endorses the use of electronic transcripts and agrees with the forward-looking concept of proposed Rule 8.144. We believe that the proposed rule will be improved with some minor changes.</p> <p>We believe the requirements of subdivisions (a)(1)(D) and (c)(1)(C), concerning page numbering, should be harmonized. The former provides only that transcripts should contain pages which are consecutively numbered. However, the latter provides more detail, but fails to state the pages must be numbered consecutively. CCRA proposes that the requirements of these two subdivisions be merged into a single paragraph, which would be contained in subdivision (a) and thus be applicable to electronic transcripts through the</p>	

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## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>introductory sentence of subdivision (c)(1) ["In addition to complying with (a) ..."].</p> <p>CCRA suggests that an additional section, (3)(A), possibly entitled Page Numbering, be added with respect to transcript page numbering for both paper and electronic transcriptions. CCRA proposes that transcripts of confidential proceedings (e.g., Marsden hearings) be consecutively numbered within the context of the entire transcript (as opposed to being set out in a separately numbered transcript). CCRA believes this amendment will provide needed guidance to court reporters and uniformity of practice throughout the state. To that end, CCRA proposes this language be included within the rule as adopted: "The reporter's sealed and confidential transcripts must be redacted from the main transcript while maintaining consecutive page numbers using only Arabic numerals (e.g. 1, 2, 3) throughout the document, including indices and certificates, and must be filed under separate cover."</p> <p>On Page 2, line 39, a section (a)(6) could be added to list the order of the transcript, such as Appellate Cover, Superior Court Cover, Indices Sessions, Witnesses, Exhibits. CCRA believes that it is important that all transcripts be filed in a consistent order, especially since reporters will be filing a one-volume reporters' transcript on appeal.</p> <p>Under current law [(a)(3)], confidential and</p>	

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## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>sealed transcripts are delivered in a secure envelope. CCRA proposes that the amended rule provide electronic transcripts be delivered securely by encrypted transmission. Encryption technology is readily available and widely used in numerous industries and applications. This technology would allow the courts to control who has access to the confidential transcripts by furnishing a password to those authorized persons. Sealed and confidential electronically filed transcripts should be required to follow the guidelines currently set for paper transcripts.</p> <p>CCRA believes that (5)(1) relating to 300 sheets needs to remain because the ability to bind more than 300 pages is unwieldy. We also believe that that section should be specifically excluded if filing electronically. Suggest it is added to (c)(2)(B).</p> <p>CCRA suggests that the reference to “the cover page required by (a)(3)” in proposed subdivision (c)(2)(A) should refer to subdivision (a)(5).</p> <p>An additional correction for consideration is Page 3, line 29 – (D) is inconsistent with page 2, line 5 “(4) Indexes.” In (4), reporters filing paper transcripts must have an index for witnesses and exhibits. In (D) reporters must have a separate index for sessions, witnesses and exhibits. CCRA suggests that indexing, whether on paper or electronic, should be identical, especially since reporters are having</p>	

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## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>to print transcripts that are currently being filed electronically on appeal to the appellate lawyers.</p> <p>Also, CCRA recommends that the last phrase of proposed subdivision (c)(2)(A) be modified to read, (A) Each individual reporter must include the cover page required by (a)(5), the indexes required by (a)(4), and an electronically signed certificate in their respective portion of the transcript.” This change is necessary because in those instances in which several reporters contribute to a transcript, each will sign a certificate as to his or her portion. The proposed rule establishes the practice as to each reporter’s portion of the entire transcript. We also suggest adding a section (D) “The primary reporter must digitally sign the single electronic document.” CCRA believes that the above changes are necessary for clarity to the reporters preparing the electronic transcripts. The need to have digital and electronic signatures separate is the fact that once a transcript is digitally signed it cannot have any changes made to it, such as merging volumes together to make one electronic document, making a master index from all volumes. Each reporter still needs to electronically sign their respective certificate page in their transcript.</p> <p>In reference to (c)(1)(A) regarding scanned documents, CCRA would suggest an additional sentence such as “except as ordered by the court.” There are certain instances (death of a</p>	

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### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>reporter, computer crashes) where a scanned copy of a previously prepared transcript is the only way to add it to an appeal.</p> <p>Thank you for the opportunity to offer these suggestions. CCRA remains available to lend its technical experience as the proposed rule takes final form.</p>	
4.	Court Reporter's Office, Superior Court of Orange County By Sean E. Lillywhite	A	<p>The Court Reporters Office in Orange County recommends the committee consider requiring only one signature type, not both; and recommends the rule require an electronic signature.</p> <p>This court is not currently e-filing court reporter transcripts. However, this court recently launched a pilot project for e-filing of court reporter transcripts on civil and probate appeals with the DCA. Adding an e-signature component and formatting requirements would not appreciably increase cost or implementation.</p> <p>Since our court is not currently e-filing court reporter transcripts, we will have sufficient time to work the new requirements into our implementation.</p>	
5.	Albert De La Isla Principal Administrative Analyst IMPACT Team – Criminal Operations Superior Court of Orange County	NI	<p>The amendment has to do with addressing specific requirements when a court reporter's transcript is delivered in electronic form. The proposed amendment to the rule would make the formatting requirements easier to follow. This would have more impact to CRIS than</p>	

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## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>Operations. I believe CRIS is at the moment still preparing hard copy transcripts for Criminal Appeals but there have been recent talks about changing this as they have already implemented electronic transcripts with Civil.</p> <p>If electronic transcripts are implemented in felony appeals, then the Felony Appellate procedures would have to be modified and an interface developed to be able to receive electronically and file stamp electronically.</p> <p><i>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?</i></p> <p>Response: Minimal if we are just receiving the document electronically by an electronic means. However, if we choose to build an interface so that they are loaded in the CMS and electronically filed stamped, the requirements are unknown.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Response: Operationally, yes if we do not build an interface.</p>	
6.	Jennifer Hicks	NI	In response to the suggested proposal, a majority of court reporters, at the present	

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**Appellate Procedure: Format for Reporter’s Transcripts Delivered in Electronic Form)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>moment, are capable of providing full text-searchable PDF (portable document format) at no additional cost to the court or to the court reporter. What hinders the court reporters from going forward in providing such productivity is the following:</p> <p>1.       Bookmarking and hyperlinks</p> <p><b>EXPLANATION:</b> Bookmarking and hyperlinks – The proposed code section obligates the reporter to interpret or assume what the court or end user wants by bookmarking and attaching hyperlinks. The Court Reporter’s position is to preserve the integrity of the record. By a Court Reporter taking on the role and deciding what should be hyperlinked or bookmarked for the end user assumes or could be perceived as being biased. Though it may seem minute of a task to do, it is disingenuous in asking the reporter to produce said product to prevent the Court Reporter from being in violation with the Court Reporters Board’s Tenet of Ethics and/or Professional Conduct.</p> <p>In regards to exhibits being hyperlinked, this would be a very tedious task. There are some cases where counsel and the court make a clean record of marking and receiving exhibits. But there are more times, than not, that exhibits are marked and never used; they are marked in one section and then used several days later; they are misidentified, relabeled, portions redacted, and so on, to have to go through and hyperlink</p>	

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## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>all these areas is difficult. This, again, requires the reporter to interpret what the court and counsel's intentions are or were during the proceedings which violates the neutrality of the Court Reporter's position.</p> <p>Preparing any type of transcript, whether it's lengthy or short, is time consuming and oftentimes is filed on the due date, depending on a reporter's workload. Requiring a reporter to now bookmark and hyperlink a transcript, especially with the above-mentioned scenario, is quite cumbersome that reporters will not be able to meet their deadlines and file for extensions which would prolong the appeal process. This is not only a detriment to the reporter, because it's frowned upon, but also to the court.</p> <p>The Court Reporters are capable of processing and accommodating the following procedure as proposed but request clarification.</p> <ol style="list-style-type: none"><li>1. Conflicting codes.</li><li>2. To volume or not to volume</li><li>3. Block numbering/larger pagination</li><li>4. Cost<ol style="list-style-type: none"><li>a. Digital signature/electronic signature</li><li>b. program</li></ol></li></ol> <p>EXPLANATION: When the reporter is mandated or ordered to prepare a transcript he/she would follow several codes which work together to come up with the end result of a transcript. By changing only one of the codes, the reporter falls in detriment of</p>	

# ITC SPR17-01

## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>not following codes properly because the reporter will have mixed information in the process of preparing a transcript which would result in a transcript that's useless to the end user.</p> <p>1. Conflicting Code(s) - An official reporter meets those obligations without ever having to interpret what the court needs are. There is a clear understanding of what is expected of an official reporter. By implementing the suggested code section would counter existing rules and codes that reporters follow in preparing transcripts that indicate the term "Paper" or "Printed Copy." Further inquiry with the Court Reporters Board and legislation need to be made to ensure all existing rules be changed so there is a consistency and that there is no confusion amongst the reporters as to which rule they must follow and will the rules coincide with one another as intended. i.e. 69950(a), 271(a) and (b), CCP 2025, 8.130(f)4) and Government Code 69954(b). If Section 8.144 is allowed to be changed as proposed, a Court Reporter could be in violation of the above code sections and putting their license in jeopardy.</p> <p>2. To Volume or not to volume – The language on this particular procedure needs to be clarified or redefined. Due to one's own interpretation this may not be seen as intended and there could be some confusion.</p> <p>Under the new subsection (a)(5) Cover, (A)</p>	

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## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>“Each volume’s cover,” originally under this section “Binding” it defined what a volume consisted of, 300 pages. (We are assuming this remains the same.) But the suggested proposal’s language has been stricken and there is no definition of what a volume consist of for electronic format. A volume is defined as 300 pages only if the transcript remains in paper form. We cannot assume that is what is wanted for electronic format.</p> <p>The rule needs to specify that volumes will continue to consist of 300 pages and will be merged together as a whole (1 file) upon submission.</p> <p>3. Block numbering/larger pagination – Is or could this section be optional? Some court reporters stride to paginate their pages (transcripts) consecutively so it’s one smooth flowing transcript. Easy for the end user. If it’s wished that the reporters use block numbering, this would create large page numbering and more volumes than if the pages of the transcript were done consecutively. For the end user it may feel choppy rather than flowing like a book.</p> <p>This procedure is more of a detriment to the primary reporters because they are focusing their attention on coordinating and setting block numbers rather than directing their attention to preparing the transcript at hand or other obligations they may have.</p>	

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### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>Where on the other hand, if paginated consecutively, the primary reporter will be notified as each reporter finishes their portion and provide a page number to the next court reporter in the segment and collaborates indexes instead of multiple pages of witness lists and exhibit pages.</p> <p>When block numbering is utilized there will be occasions when blurbs are used because all designated pages were not filled with text. When the transcript is uploaded into a program, any program, the pagination will not correspond respectively because it cannot read that "Pages 485-600 were intentionally left blank." This will violate the proposed language under (c)(1)(C) indicating, "The electronic page counter in a PDF file viewer must match the transcript page numbering."</p> <p>The end result is that the transcript is assembled in a book-style format so the end user is able to navigate throughout the pages with ease.</p> <p>4. Cost</p> <p>a. Digital signature/electronic signature – It is preferred to have a digital signature. There is an ongoing cost to the Court Reporter, during the reporter's career as well as in their retirement to continue to meet their obligations.</p> <p>b. Program – As indicated, the introduction of these rules were suggested by a reporter's association who endorses a program that will provide all the suggested changes in 8.144. Regardless if that specific plan is used or</p>	

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## Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

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	Commentator	Position	Comment	Committee Response
			<p>not, there is a cost to the reporter to use a program to meet the need of bookmarking and hyperlinking should that language remain in. JCC is informed it's at no cost to them or the courts because the burden is on the court reporters.</p> <p>If this rule is implemented, it will force reporters to use a program to meet the guidelines, not only during their career, but also for ten years after they retire. Without going into details, this is a detriment to the reporters financially during their career as well as into retirement.</p> <p>Court Reporters can produce and accommodate the transcripts right now -- at no cost to the court and no additional cost to the court reporter -- by uploading the transcripts in PDF format. With the elimination of bookmarking and hyperlinking requirements and with making all court reporter codes consistent with computer-readable format language, this will eliminate the court reporter interpreting what the end user wants and protect the court reporter from violating codes and Tenets of Ethics and focus on preserving the integrity of the record.</p> <p>Specific comments: Implementation requirements for the court: Training and preparation will be needed to ensure staff understands the protocol thoroughly, i.e., uploading, processing, digitally file stamping, notifying parties. This applies to</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p>both the clerks and the reporters. From the reporter's standpoint, not all reporters are tech savvy, and so this might be challenging for some. This will be another task that the court reporter supervisor/manager will have to monitor to ensure no delays in the process.</p> <p>It's foreseen that the transcripts will have more typographical errors and/or format errors on them because those are usually caught when the court reporter prints out the final copies to submit. Some even rely on their supervisor to catch the errors during processing of the transcript. That process will be eliminated.</p>	
7.	Jeannette Jessup Official Reporter Monterey, CA	N	<p>We are a very small county and do not use lead reporters. Some of our software also does not have the ability to bookmark. So the change for bookmarking by a lead reporter and merging all volumes in one document will be difficult if not impossible.</p>	
8.	Orange County Bar Association By Michael L. Baroni	A	No specific comment	
9.	Service Employees International Union by Kimberly Rosenberger  California Labor Federation by Caitlin Vega  IFPTE 21 by Shane Gusman	N	<p>We the undersigned organizations representing trial court employees write in opposition to the proposed amendment to the California Rules of Court, rule 8.144.</p> <p>We strongly urge the Appellate Advisory Committee to abandon proposals to change the rule of court, as they are too restrictive, inhibit technological advancements, and impose an</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Laborers International Union of North America, by Liberty Sanchez</p> <p>America, Locals 777 &amp; 792 Orange County Employees Association by Patrick Moran</p> <p>American Federation of State County and Municipal Employees by Joshua Golka</p>		<p>unfair and expensive burden on court reporters. The majority of Computer-Aided Transcription (CAT) software is unable to comply with the requirements proposed, specifically the proposals found in sections (c)(1)(C), (c)(1)(D), (2)(B) and (2)(C).</p> <p>The transition to modern technology has been costly and often unsuccessful in the public sector and especially in the judicial branch. However, the most successful use of technology in the judicial branch has been that of the court reporters. Advancements have allowed for real time captioning, electronic transcripts, and so much more. This is directly due to the reporters being the owners, as well as the operators of the technology they use. The proposed amendments to the rule of court take away that autonomy and monopolize the CAT software field. The proposed rules impose requirements that only one vendor at this time provides.</p> <p>Court reporters are in a unique position where they not only are the target demographic for use of the technology, but they are also the customer. This has given the reporters purchasing power that has allowed them to directly influence the field. Court reporters have continued to evolve in the technology they use, investing in CAT software that improves the access and availability to transcripts for the courts and the public. This technology comes directly out of the pocket of the reporters, despite their rates having stagnated for over a</p>	

**ITC SPR17-01**

**Appellate Procedure: Format for Reporter’s Transcripts Delivered in Electronic Form)**

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>quarter of a century.</p> <p>Additionally, section 2(B) requires multiple volumes to be merged into a single electronic document. Currently this is performed by court clerks in the Internal Appeals Division and accounts for a large bulk of their work. The division is responsible for collecting transcripts, tracking deadlines, and merging the total document as one unit for the Court of Appeals. To shift this work entirely on to court reporters is problematic for a number of reasons. The additional workload proposed not only creates an untenable amount of work for the reporter, but it would also result in a merging of job classifications without meeting or notifying the unions that represent these workers. Furthermore, it greatly increases the workload of reporters without any compensation. This proposal will likely result in increased backlog and delayed access to justice, as the deadlines will remain the same despite requiring new technology and new duties.</p> <p>The proposed rules place a costly onus on court reporters and also create a monopoly in the industry that discourages innovation and competition. Court reporters are supportive of efforts to shift to electronic transcripts, despite the cost and additional work placed on them. However, the proposed changes approach evolving technology in the wrong way. We oppose the proposed Rule of Courts changes, and instead urge the committee to consider</p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			language that allows for the advancement of technology rather than burdensome limitations.	
10.	Superior Court of Los Angeles County	AM	<p>Suggested modification: Rule 8.144 (c) (1) (E) - It would not be necessary to have both an electronic and digital signature on electronically transmitted transcripts. Once the mechanism is in place, digital signatures are fairly easy to handle or maintain. The court's concern would be validity and authentication. If the transcripts are submitted via an electronic portal or by email, there is a high certainty that it actually came from the court reporter. Electronic signature would be easier and cheaper.</p> <p><i>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?</i></p> <ul style="list-style-type: none"><li>• Staff training and communication<ul style="list-style-type: none"><li>○ Transcript Auditors (6) 4-6 hours</li><li>○ Court Reporters (450+) 4 hours</li></ul></li><li>• Update Court Reporter Manual 16 hours</li><li>• Update Court website information re transcript formatting, including examples 16 hours</li></ul> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			Yes, three months is sufficient for implementation.	
11.	Superior Court of Riverside County By Susan D. Ryan	AM	Only copies can be in electronic format. At this time, the original must be a hard copy. Recommend the following additions: Page 6 line 10. (c) Add the words "copies of the" after the word for. (c) Additional requirements for copies of the reporter's transcript delivered in electronic form Page 7 line 3 under the heading (2) Multivolume or multi-reporter transcripts In addition to the requirements in (1), copies of multivolume or multi-reporter transcripts delivered in electronic format must comply with the following requirements:	
12.	Superior Court of San Diego County By Michael Roddy, Executive Officer	A	<i>In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the whether it is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?</i> No comment.  <i>What would the implementation requirements be for courts?</i> No impact on appeals clerks.  <i>Would three months from Judicial Council approval of this proposal until its effective date</i>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (\*).

	Commentator	Position	Comment	Committee Response
			<p><i>provide sufficient time for implementation?</i>                      Yes, as far as appeals clerks are concerned.</p>	
13.	Superior Court of Ventura County by Nan L Richardson	AM	<p><b>Digital vs. Electronic signature:</b></p> <ul style="list-style-type: none"> <li>• Electronic – indicates a person’s intent to sign a record and is legally binding</li> <li>• Digital – encrypts a data associated with a document. Does not legally bind a signature to a document</li> </ul> <p>Preference: All reporter transcripts be electronically signed</p> <p><b>Implementation:</b></p> <ul style="list-style-type: none"> <li>• Training official court reporters – 3 to 4 hours per official reporter; 2 hours per contract reporter</li> </ul> <p><b>Three months for implementation sufficient?</b></p> <ul style="list-style-type: none"> <li>• Six months preferred</li> </ul> <p>Title 8. Appellate Rules: Rule 8.144. Form of the Record</p> <p>(c)(1)(A) “Be generated electronically; it must not be created from a scanned document.”</p> <ul style="list-style-type: none"> <li>• Court reporters may need to scan a transcript if the paper transcript is available and has been previously prepared, but the electronic transcript is no longer available due to reporter unavailability or technological issues that prevent access to the electronic transcript                             <ul style="list-style-type: none"> <li>○ Suggested change: “Be generated electronically; it may be scanned if electronic generation unavailable.”</li> </ul> </li> </ul>	

## ITC SPR17-01

### Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<ul style="list-style-type: none"><li>(2)(A) "Each individual reporter must include the cover page required by (a)(3)" ... should read (a)(5)</li></ul>	

# Privacy Resource Guide

For the California  
Trial and Appellate Courts  
and the Judicial Branch

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First Edition  
\_\_\_\_\_, 2018

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# 1. Introduction

## 1.1 Background

Privacy is a fundamental right guaranteed by the California Constitution. (Cal. Const., art I, § 1; see *Westbrook v. County of Los Angeles* (1994) 27 Cal. App 157, 164–166.) To protect people’s privacy, numerous laws have been enacted that provide for the confidentiality of various kinds of personal information. In adjudicating cases, courts have a major role in enforcing these laws and protecting the privacy rights of citizens. Courts also are involved in protecting people’s privacy rights through their own day-to-day operations, including preserving the integrity of confidential and sealed records, ensuring that sensitive data is secure, and protecting private personal information.

On the other hand, access to information concerning the conduct of the public’s business is also a fundamental right of every citizen. (Cal. Const., art I, § 3(b); see *NBC Subsidiary (KNBC-TV) v. Superior Court of Los Angeles County* (1999) 20 Cal.4th 1178, 1217–1218 (substantive courtroom proceedings in ordinary civil cases are “presumptively open”).) Courts are obligated to conduct their business in an open and transparent manner. (See also Cal. Rules of Court, rule 10.500.) Similarly, court records are presumed to be open and must be made accessible to the public unless made confidential or sealed. (See Cal. Rules of Court, rule 5.550(c).)<sup>1</sup> Openness and accessibility are important to preserve trust and confidence in the judicial system; and they are necessary to carry on the regular, ongoing business of the courts.<sup>2</sup>

## 1.2 Purpose of the Privacy Resource Guide

The purpose of this resource guide is to assist the trial and appellate courts—and more generally the judicial branch—to protect the privacy interests of persons involved with the California court system while providing the public with reasonable access to the courts and the records to which they are entitled.

The resource guide provides assistance in two ways. First, it provides information about the legal requirements that guide the courts’ activities and operations relating to protecting the privacy of persons involved with the court system. Second, the guide provides practical advice for courts on the best practices for carrying out their obligations to protect people’s privacy.

The creation of the resource guide at this time is important, among other reasons, because of the major transition underway that is transforming the courts from a paper-based physical system to

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<sup>1</sup> All references to rules in this Resource Guide are to the California Rules of Court, unless otherwise indicated.

<sup>2</sup> In recognition of the special role that courts play in conducting the people’s business, the Legislature has in some instances exempted the courts from laws enacted to protect personal privacy. (See, e.g., Civ. Code, §1798.3(b)(1) [excluding from the definition of “agency” covered by the Information Privacy Act of 1977 “[a]ny agency established under Article VI of the California Constitution”—that is, the courts]).

one that relies increasingly on electronic records and other forms of technology to conduct business. With this change, much information in the courts that was practically obscure can now be made available remotely in easily searchable format. It requires careful analysis and the deliberate institution of new practices to ensure that proper privacy protections are now in place.

### 1.3 Key Definitions

As used in this Resource Guide, unless the context or subject matter otherwise requires:

- (1) “Court record” means any document, paper, or exhibit filed by the parties to an action or proceeding; any order or judgment of the court; any item listed in 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. (Cal. Rules of Court, rule 2.502.)
- (2) “Electronic record” means 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.
- (3) "Adjudicative record" means any writing prepared for or filed or used in a court proceeding, the judicial deliberation process, or the assignment or reassignment of cases and of justices, judges (including temporary and assigned judges), and subordinate judicial officers, or of counsel appointed or employed by the court. (Cal. Rules of Court, rule 10.500(c)(1).)
- (4) “Confidential record” is a record that based on statute, rule, or case law is not open to inspection by the public.
- (5) "Judicial administrative record" means any writing containing information relating to the conduct of the people's business that is prepared, owned, used, or retained by a judicial branch entity regardless of the writing's physical form or characteristics, except an adjudicative record. The term "judicial administrative record" does not include records of a personal nature that are not used in or do not relate to the people's business, such as personal notes, memoranda, electronic mail, calendar entries, and records of Internet use. (Cal. Rules of Court, rule 10.500(c)(2).)
- (6) “Protected personal information” or “PPI” means any personal information or characteristics that may be used to distinguish or trace an individual’s identity, such as their name, Social Security Number (SSN), or biometric records. (32 CFR 701.101.)

- (7) “Rule” means a rule of the California Rules of Court.
- (8) “Sealed record” means a record that by court order is not open to inspection by the public. (See Cal. Rules of Court, rule 2.550(b)(2))
- (9) "Writing" means any handwriting, typewriting, printing, photographing, photocopying, electronic mail, fax, and every other means of recording on any tangible thing any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations, regardless of the manner in which the record has been stored. (Cal. Rules of Court, rule 10.500(c)(6).)

## **2. Privacy in Court Records**

### **2.1 Confidential and Sealed Records in the Trial Courts**

Protection of privacy is an important major reason for making court records confidential or for sealing them. By making a document confidential or sealing it, the public can be prevented from obtaining access to sensitive personal information or other information that might adversely affect a person’s privacy. By respecting and enforcing the confidentiality or sealing, courts assist in protecting and preserving persons’ privacy. However, there may be other reasons for making a document confidential or for sealing it besides protecting privacy. For example, confidentiality or sealing may be used to ensure the safety of witnesses, to protect trade secrets, or to preserve legally recognized privileges. This section focuses on records that are confidential or sealed in the trial courts principally or at least in part for reasons of protecting privacy interests.

Subsection 2.1.1 provides a non-exhaustive list of types of cases and proceedings and of specific records<sup>3</sup> that are exempt from the presumption of public disclosure by statute, regulation, court rule, or case law. Some records by law are strictly confidential and others may be confidential in particular circumstances. In addition to the records described in this section, there are many other confidential records discussed under more specific headings later in this Resource Guide and described in the Appendix.

Sealed records in the trial courts are discussed in subsection 2.1.2

#### **2.1.1 Confidential Records**

##### **Records of Adoption Proceedings**

Documents related to an adoption proceeding are not open to the public. Only the parties, their attorneys, and the Department of Social Services may review the records. The judge can authorize review by a requestor only in “exceptional circumstances and for good cause

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<sup>3</sup> Judicial Council forms may sometimes constitute the record or part of the record in a case. Any Judicial Council form that is labeled or entitled “CONFIDENTIAL” must not be disclosed, except as authorized by law.

approaching the necessitous.” (Fam. Code, § [9200\(a\)](#).) Any party to the proceeding can petition the court to have redacted from the records, before copy or inspection by the public, the name of the birth parents and information tending to identify the birth parents. (Fam. Code, § [9200\(b\)](#).)

### **Records of Juvenile Proceedings**

Welfare and Institutions Code section [827](#) and California Rules of Court, rule [5.552](#), establish broad restrictions on the disclosure of juvenile court records. These laws reflect a general policy that, with certain limited exceptions, juvenile court records should remain confidential. (*In re Keisha T.* (1995) 38 Cal.App.4th 220, 225.) Specifically, section [827\(a\)\(1\)\(P\)](#) permits juvenile court records to be inspected only by certain specified persons and “any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.” There is also an exception to this rule of confidentiality for certain records in cases brought under Welfare and Institutions Code section [602](#), in which the minor is charged with one or more specified violent offenses. (Welf. & Inst. Code, § [676](#).) In such cases, the charging petition, the minutes, and the jurisdictional and dispositional orders are available for public inspection (Welf. & Inst. Code, § [676\(d\)](#)), unless the juvenile court judge enters an order prohibiting disclosure (Welf. & Inst. Code, § [676\(e\)](#)). Thus, except for records enumerated in Welfare and Institutions Code section 676, if a record is part of a juvenile court file, it should be kept confidential and disclosed only as permitted under Welfare and Institutions Code section [827](#) and California Rules of Court, rule [5.552](#). Juvenile court records may also be subject to sealing orders under Welfare and Institutions Code sections [389](#), [781](#), and [786](#) (see § 2.1.2, “Sealed Records”).

Juvenile court records should remain confidential regardless of a juvenile’s immigration status. (Welf. & Inst. Code, § [831\(a\)](#).) Juvenile information may not be disclosed or disseminated to federal officials absent a court order upon filing a petition under Welfare and Institutions Code section [827\(a\)](#). (Welf. & Inst. Code, § [831\(b\)–\(c\)](#).) Juvenile information may not be attached to any documents given to or provided by federal officials absent prior approval of the presiding judge of the juvenile court under Welfare and Institutions Code section [827\(a\)\(4\)](#). (Welf. & Inst. Code, § [831\(d\)](#).) “Juvenile information” includes the “juvenile case file” as defined in Welfare and Institutions Code section [827\(e\)](#), as well as information regarding the juvenile such as the juvenile’s name, date or place of birth, and immigration status. (Welf. & Inst. Code, § [831\(e\)](#).)

Dismissed petitions: The court must order sealed all records related to any petition dismissed under Welfare and Institutions Code section [786](#) that are in the custody of the juvenile court, law enforcement agencies, the probation department, and the Department of Justice. The procedures for sealing these records are stated in Welfare and Institutions Code section 786.

### **Special Immigrant Juvenile Findings**

In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, information regarding the child’s immigration status that is not otherwise protected by the state confidentiality laws must remain confidential and must be available for inspection only by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child’s counsel, and the child’s guardian. (Code Civ. Proc., § [155\(c\)](#).)

In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, records of the

proceedings that are not otherwise protected by state confidentiality laws may be sealed using the procedure in California Rules of Court, rules [2.550](#) and [2.551](#). (Code Civ. Proc., § [155\(d\)](#).)

## **Confidentiality of Records in Civil Cases**

### **Unlawful Detainer Proceedings**

Court files and records in unlawful detainer proceedings are not publicly available until 60 days after the case is filed, except for persons specified by statute, unless a defendant prevails in the action within 60 days of the filing of the complaint, in which case the clerk may not allow access to any court records in the action except to persons specified in the statute. (Code Civ. Proc., § [1161.2](#).) An exception excludes records of mobile home park tenancies from this code section; those records are not confidential. In addition, effective January 1, 2011, access to court records in unlawful detainer proceedings is permanently limited to persons specified in the statute in the case of complaints involving residential property based on section [1161a](#) (holding over after sale under execution, mortgage, or trust deed [foreclosures]) as indicated in the caption of the complaint, unless judgment has been entered, after a trial, for the plaintiff and against all defendants. (Code Civ. Proc., § [1161.2](#).) The complaints in these actions shall state in the caption: “Action based on Code of Civil Procedure section [1161a](#).”(Code Civ. Proc., § [1166\(c\)](#).)

### **False Claims Act Cases**

The documents initially filed in cases under the False Claims Act are confidential under Government Code section [12650](#) et seq. The complaint and other initial papers should be attached to a Confidential Cover Sheet—False Claims Action (form [MC-060](#)). The cover sheet contains a place where the date on which the sealing of the records in the case expires.

## **Confidential Records in Criminal Proceedings**

### **Search warrants**

It is within the court’s discretion to seal the court documents and records of a search warrant until the warrant is executed and returned, or until the warrant expires. (Pen. Code, § [1534\(a\)](#).) Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record. Under Evidence Code §§ 1040 – 1041, public entities may refuse to disclose official information and an informant’s identity when disclosure is against the public interest. When a search warrant is valid on its face, a public entity bringing a criminal proceeding may establish the search’s legality without revealing to the defendant any official information or an informant’s identity. (Evid. Code, § 1042, subd. (b).) When a search warrant affidavit is fully or partially sealed pursuant to Evidence Code §§ 1040 - 1042, the defense may request a motion to quash or traverse the search warrant. The court should follow the procedure established in *People v. Hobbs* (1994) 7 Cal.4th 948.

### **Police reports**

There is no specific statute, rule, or decision addressing the confidentiality of a police report once it has become a “court record.” Generally speaking, a police report that has been used in a judicial proceeding or is placed in a court file is presumed to be open to the public. Many police reports, however, contain sensitive or personal information about crime victims, witnesses, and other third parties. Penal Code section [1054.2](#) provides that defense counsel may not disclose the

address or telephone number of a victim or witness to the defendant or his or her family. Similarly, law enforcement agencies are prohibited from disclosing the address and phone number of a witness or victim, or an arrestee or potential defendant. (Pen. Code, § [841.5](#).) We suggest that courts should require that personal information be redacted *before* the report is filed with the court or used in a judicial proceeding.

### **Probation reports**

Probation reports filed with the court are confidential *except* that they may be inspected

- by anyone up to 60 days after either of two dates, whichever is earlier: (1) when judgment is pronounced, or (2) when probation is granted;
- by any person pursuant to a court order;
- if made public by the court on its own motion; and
- by any person authorized or required by law. (Pen. Code, § [1203.05](#).)

### **Confidential Records in Family Law proceedings**

#### **Child custody evaluation reports**

These reports must be kept in the confidential portion of the family law file and are available only to the court, the parties, their attorneys, federal or state law enforcement, judicial officer, court employee or family court facilitator for the county in which the action was filed (or employee or agent of facilitator), counsel for the child, and any other person upon order of the court for good cause. (Fam. Code, §§ [3025.5](#) and [3111](#).)

#### **Child custody mediator recommendations**

These recommendations must be kept in the confidential portion of the family law file and are available only to the court, the parties, their attorneys, federal or state law enforcement, judicial officer, court employee or family court facilitator for the county in which the action was filed (or employee or agent of facilitator), counsel for the child, and any other person upon order of the court for good cause. (Fam. Code, §§ [3025.5](#) and [3183](#).)

#### **Written statements of issues and contentions by counsel appointed for child**

These written statements must be kept in the confidential portion of the family law file and are available only to the court, the parties, their attorneys, federal or state law enforcement, judicial officers, court employees or family court facilitators for the county in which the action was filed (or employee or agent of facilitator), counsel for the child, and any other person, upon order of the court, for good cause. (Fam. Code, §§ [3025.5](#), [3151\(b\)](#).)

#### **Parentage Act documents**

Records in Uniform Parentage Act proceedings, except the final judgment, are not open to the public. (Fam. Code, § [7643\(a\)](#).) If a judge finds that a third party has shown good cause and finds exceptional circumstances, the court may grant that person access to the records. (*Ibid.*) This includes records from paternity actions.

#### **Family conciliation court records**

These records are confidential. The judge of the family conciliation court can grant permission for a party to review certain documents. (Fam. Code, § [1818\(b\)](#).)

### **Proceeding to terminate parental rights**

Documents related to such proceedings are confidential; only persons specified by law may review the records. (Fam. Code, § [7805](#).)

### **Support enforcement and child abduction records**

Support enforcement and child abduction records are generally confidential; these records may be disclosed to persons specified by statute only under limited circumstances. In certain instances, the whereabouts of a party or a child must not be revealed to the other party or his or her attorneys. A local child support agency must redact such information from documents filed with the court. (Fam. Code, § [17212](#).)

### **Confidential Records in Probate Proceedings**

#### ***Confidential Guardian Screening Form*** (form [GC-212](#))

This mandatory Judicial Council form regarding the proposed guardian is confidential. It is used by the court and by persons or agencies designated by the court to assist in determining whether a proposed guardian should be appointed. (Cal. Rules of Court, rule [7.1001\(c\)](#).)

#### ***Confidential Supplemental Information*** (form [GC-312](#))

This form regarding the proposed conservatee is confidential. It shall be separate and distinct from the form for the petition. The form shall be made available only to parties, persons given notice of the petition who have requested this supplemental information, or who have appeared in the proceedings, their attorneys, and the court. The court has the discretion to release the information to others if it would serve the interest of the conservatee. The clerk shall make provisions for limiting the disclosure of the report exclusively to persons entitled thereto. (Prob. Code, [1821\(a\)](#).)

#### ***Confidential Conservator Screening Form*** (form [GC-314](#))

This mandatory Judicial Council form is confidential. (Cal. Rules of Court, rule [7.1050\(c\)](#).)

### **Reports regarding proposed conservators or guardianship**

An investigative report created pursuant to Probate Code section [1513](#) concerning a proposed guardianship is confidential and available only to parties served in the action or their attorneys (generally, parents, legal custodian of child). An investigative report created pursuant to Probate Code section [1826](#) regarding the proposed conservatee is confidential and available only to those persons specified by statute. Under the statute, the reports on proposed conservatees shall be made available only to parties, persons given notice of the petition who have requested the report, or who have appeared in the proceedings, their attorneys, and the court. The court has the discretion to release the information to others if it would serve the interest of the conservatee. The clerk shall make provisions for limiting the disclosure of the reports on guardianships and conservatorships exclusively to persons entitled thereto. (Prob. Code, §§ [1513\(d\)](#) and [1826\(n\)](#).)

### **Investigator's review reports in conservatorships**

These reports are confidential. The information in the reports may be made available only to parties, persons identified in section [1851\(b\)](#), persons given notice who have requested the report or appeared in the proceeding, their attorneys, and the court. The court has the discretion to release the information to others if it would serve the interests of the conservatee. The clerk shall

make provisions for limiting the disclosure of the report exclusively to persons entitled thereto. (Prob. Code, §§ [1851\(b\) and \(e\)](#).) Subdivision (b) provides for special restricted treatment of attachments containing medical information and confidential criminal information from California Law Enforcement Telecommunications System (CLETS). Although the attachments are not mentioned in (e), it is recommended, to be consistent with (b), that they be treated as confidential except to the conservator, conservatee, and their attorneys.

### **Certification Forms**

Certification of counsel of their qualifications (form [GC-010](#)) and certification of completion of continuing education (form [GC-011](#)): The forms state that they are “confidential for court use only.” They are governed by rule [7.1101](#), which states that the certifications must be submitted to the court but not lodged or filed in a case file. (Cal. Rules of Court, rule [7.1101\(h\)\(6\)](#).)

### **Confidential Records in Protective Order Proceedings**

#### **Confidential CLETS Information Form**

A Judicial Council form, *Confidential CLETS Information* (form [CLETS-001](#)), has been developed for petitioners in protective order proceedings to use to submit information about themselves and the respondents to be entered through the CLETS (the California Law Enforcement Telecommunications System) into the California Restraining and Protective Order System (CARPOS), a statewide database used to enforce protective orders. This form is submitted to the courts by petitioners in many types of protective order proceedings, including proceedings to prevent domestic violence, civil harassment, elder and dependent adult abuse, private postsecondary school violence, and juvenile cases. The information on the forms is intended for the use of law enforcement. The form is confidential. Access to the information on the forms is limited to authorized court personnel, law enforcement, and other personnel authorized by the California Department of Justice to transmit or receive CLETS information. The forms must not be included in the court file. (Cal. Rules of Court, rule [1.51](#).)

#### **Subpoenaed records**

##### **Subpoenaed business records**

Subpoenaed business records of nonparty entities are confidential until otherwise agreed to by the parties, introduced as evidence, or entered into the record. (Evid. Code, § [1560\(d\)](#).)

#### **Employment records**

#### ***Pitchess* motions**

#### **Medical records**

The following federal and California statutes limit disclosure of medical records by medical providers, health care plans, or contractors. The laws do not impose obligations on the courts as to handling, management, and retention of medical records in court records. However, courts should place appropriate protections on medical records that have been filed confidentially or under seal.

***Health Insurance Portability and Accountability Act (HIPAA):***

HIPAA and related federal regulations (42 U.S.C. § [1320d](#) et seq., 45 C.F.R. § [160](#) et seq. and [164](#) et seq.) set standards for medical information held by covered entities, defined as 1) a health plan, 2) health care clearinghouse, or 3) a health care provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA provisions. (45 C.F.R. § [160.102](#)(a).) Generally, courts are not covered entities subject to HIPAA and therefore, are not directly subject to the privacy rules of HIPAA. (See 45 C.F.R. parts 160-164.) However, HIPAA prohibits covered entities from disclosing medical records or protected health information (“PHI”) without a patient’s signed authorization or a signed court order. (45 C.F.R. section 164.508; 45 C.F.R. section 164.512(e)(1).) Accordingly, parties responsible for maintaining confidentiality of information under HIPAA should request that such information be filed under seal pursuant to rules 2.550 and 2.551 of the California Rules of Court.

To the extent that a court meets the definition of “plan sponsor” under HIPAA, a court may have to comply with certain privacy obligations and should consult with its Human Resources department.

***California Confidentiality of Medical Information Act (Civ. Code, section 56-56.37):***

The Confidentiality of Medical Information Act (“CMIA”) governs the disclosure of medical information by health care providers. (Civ. Code § [56](#) et seq.) Courts are generally not health care providers covered by the act and are not directly subject to the law’s confidentiality provisions. (Civ. Code § [56.05](#)(m).) A limited exception may occur when a court employs a health care provider, such as a clinical social worker, to conduct assessments and other services for a collaborative court. In these limited circumstances, the medical information is likely confidential, and court staff should use an authorization for release of medical information to discuss pertinent information with other collaborative court team members. (Civ. Code § [56.10](#)(a).) California law prohibits medical providers, health care service plans, or contractors from disclosing a patient’s medical information, without authorization, or, among other things, a court order. (Civ. Code, section 56.10(b)(1).) A party submitting such medical information should submit the information pursuant either to a protective order and/or a motion to seal. (See Rule [2.551](#).)

**Psychiatric records or reports**

***Records of mental health treatment or services for the developmentally disabled, including LPS proceedings***

Under Welfare and Institutions Code sections [5328](#) and [5330](#), the following records are confidential and can be disclosed only to recipients authorized in Welfare and Institutions Code section 5328: records related to the Department of Mental Health (Welf. & Inst. Code, § [4000](#) et seq.); Developmental Services (Welf. & Inst. Code, § [4400](#) et seq.); Community Mental Health Services (Welf. & Inst. Code, § [5000](#) et seq.); services for the developmentally disabled (Welf. & Inst. Code, § [4500](#) et seq.); voluntary admission to mental hospitals (Welf. & Inst. Code, § [6000](#) et seq.); and mental institutions (Welf. & Inst. Code, § [7100](#) et seq.).

### ***Psychiatric records or reports in criminal cases***

Reports prepared at the request of defense counsel to determine whether to enter or withdraw a plea based on insanity or mental or emotional condition are confidential. (Evid. Code, § [1017](#).) However, most psychiatric reports prepared at the court's request are presumed open to the public. (See Evid. Code, § 1017[report by a court-appointed psychotherapist]; Evid. Code, § [730](#) [report by a court-appointed expert]; Pen. Code, § [288.1](#) [report on sex offender prior to suspension of sentence]; Pen. Code, § [1368](#) [report concerning defendant's competency]; and Pen. Code, §§ [1026](#), [1027](#) [report on persons pleading not guilty by reason of insanity].)

### ***Reports concerning mentally disordered prisoners***

Reports under Penal Code section [4011.6](#) to evaluate whether prisoners are mentally disordered are confidential. (Pen. Code, § 4011.6.)

### ***Presentencing diagnostic reports***

Under Penal Code section [1203.03](#), the report and recommendation from the 90-day Department of Corrections presentencing diagnosis should be released only to defendant or defense counsel, the probation officer, and the prosecuting attorney. After the case closes, only those persons listed immediately above, the court, and the Department of Corrections may access the report. Disclosure to anyone else is prohibited unless the defendant consents. (Pen. Code, § [1203.03\(b\)](#).)

### ***Medical diagnoses and test results***

#### ***Substance use disorder-related information from qualifying federally assisted programs***

The Code of Federal Regulations provides that information that would disclose the identity of a person receiving treatment for a substance use disorder from a qualifying federally assisted program is confidential. (42 C.F.R. § [2.12](#).) A “qualifying federally assisted program” subject to the regulations includes a recipient of federal financial assistance in any form, including financial assistance which does not directly pay for the substance use disorder diagnosis, treatment, or referral for treatment; or a program conducted by a state or local government unit which, through general or special revenue sharing or other forms of assistance, receives federal funds which could be (but are not necessarily) spent for the substance use disorder program. (*Id.* at § [2.12\(b\)\(3\)\(i\)](#), (ii).) A “program” is defined to include “an individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment “. . . (*Id.* at § [2.11\(a\)](#).) Information from collaborative courts involving substance use disorder diagnosis or treatment, such as drug court programs, may be subject to the confidentiality provisions of the federal regulations, depending on whether the program or the court receives federal financial assistance as defined in the regulations. This may include information related to program participants and records identifying the participant and his or her diagnosis and treatment.

### ***HIV Test Results or Status***

No person shall disclose HIV test results without the patient's signed authorization, or except pursuant to Health and Safety Code sections [1603.1](#), [1603.3](#), or [121022](#), or any other statute expressly providing an exemption. (Health and Saf. Code, § [120980\(g\)](#).)

Court records containing results of mandatory AIDS testing for defendants convicted of violating Penal Code section [647\(b\)](#) are, with certain specified exceptions, confidential. (Pen. Code, § [1202.6\(f\)](#).) HIV test results ordered of defendants charged with certain crimes are also confidential. (Pen. Code, §§ [1202.1](#), [1524.1](#).)

If a court orders HIV tests under Health and Safety Code sections [121055](#), [121056](#), and [121060](#), the court shall order that all persons receiving the results maintain the confidentiality of personal identifying data related to the test results, except as necessary for medical or psychological care or advice. (Health and Saf. Code, § [121065](#).)

However, HIV status and/or test results under Penal Code §§ [647f](#) and [12022.85](#), and Health and Safety Code §§ [1621.5](#), [120290](#), and [120291](#) are generally not confidential as they are a required element of a crime or enhanced sentencing and may become part of the public court records in these cases.

**[NOTE: Pending legislation may affect some of the preceding statutes by either repealing and/or making certain information confidential. If the legislation is enacted, the analysis will need to be modified.]**

### **2.1.2 Sealed records**

**General Rules on Sealed Records:** Rules 2.500 and 2.551

The main rules on sealed records in the trial courts are contained in rules [2.550](#) and [2.551](#) of the California Rules of Court. The premise of these rules is that court records are presumed to be open unless confidentiality is required by law. (Rule [2.550\(c\)](#).) A court may only order that a record be filed under seal if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(Rule [2.551\(d\)](#).) This substantive test is based on the Supreme Court’s decision in *NBC Subsidiary (KNBC-TV) v. Superior Court of Los Angeles County* (1999) 20 Cal.4th 1178, 1217–1218.

The right of privacy may qualify as an overriding interest in the proper situation. In *In re Marriage of Burkle* (2006) 135 Cal. App.4th 1045, the court stated: “We have no doubt that, in appropriate circumstances, the right of privacy may be properly described as a compelling or overriding interest.” *Id.*, at page 1063. However, the *Burkle* case involved an attempt to close financial records in divorce proceedings under a statute, Family 2024.6, which the court concluded was not narrowly tailored to serve overriding privacy interests. Because less restrictive means exist to achieve the statutory objective, the court found that section 2024.6 operates as an undue burden on the First Amendment right of public access to court records. Hence, the court concluded that statute is unconstitutional on its face. *Id.* at page 1048.

In circumstances where a court determines that sealing is appropriate, the content and scope of the sealing order is prescribed by rule. The rules provide that the court’s order must (1) state the facts that support the findings, and (2) direct the sealing of only those documents and pages, or if reasonably practical, portions of those documents and pages, that contain the materials that need to be placed under seal. All other portions of each document or page must be included in the public file. (Cal. Rules of Court, rule [2.550\(e\)](#).)

The procedures for filing records under seal in the trial courts are contained in rule 2.551. (Cal. Rules of Court, rule [2.551](#).)

**Sealing of records in criminal cases**

Criminal court records may be sealed upon a motion and court order under the following provisions:

<i>Code section</i>	<i>Description</i>
<b>Upon finding of defendant’s factual innocence either by law enforcement agency or court</b>	
Pen. Code § 851.8	-When defendant is found factually innocent pursuant to section 851.8, the court shall order that records of arrest (interpreted to include any court records) be sealed and destroyed.
<b>Upon defendant’s acquittal and judge’s finding of factual innocence</b>	
Pen. Code § 851.85	-When a defendant is acquitted and it appears to the judge presiding at the trial that the defendant was factually innocent of the charge, the judge may order that

	<p>the records in the case be sealed, including any record of arrest or detention</p> <p>-Occurs upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case</p>
<b>Upon defendant's conviction being set aside based determination of factual innocence</b>	
Pen. Code § 851.86	<p>-When a defendant's conviction is set aside based upon a determination that he or she was factually innocent of the charge, the judge shall order that the records in the case be sealed, including any record of arrest or detention</p> <p>-Occurs upon written or oral motion of any party in the case or the court, and with notice to all parties to the case</p>
<b>Upon successful completion of a diversion program</b>	
Pen. Code § 851.87	A person that successfully completes a pre-filing diversion program may petition the court to seal arrest and court files two years after successful completion of the diversion program. The sealing order shall not be forwarded to the Department of Justice and has other limitations.
Pen. Code § 851.90	A person that successfully completes a drug diversion program under Pen. Code §§ 1000, 1000.5, or 1000.8 may petition the court to seal arrest and court files. The sealing order shall not be forwarded to the Department of Justice and has other limitations.
<b>Discretionary sealing upon dismissal of a case</b>	
Pen. Code § 1170.9(h)(4)(D)	When a dismissal pursuant to Pen. Code 1170.9 is granted (criminal offenses related to trauma, injury, substance abuse, or mental health problems stemming from military service), the court has the discretion to order the sealing of police records of the arrest and court records of the dismissed action, thereafter viewable by the public only in accordance with a court order.
Pen. Code § 1203.45	Persons under 18 years of age at the time of commission of a misdemeanor who are eligible for, or have previously received, the relief provided by Section 1203.4 or 1203.4a may petition the court to seal the

	record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted or charges were dismissed. Some misdemeanor convictions are ineligible under this section.
<b>Mandatory sealing upon grant of a petition under WIC § 781</b>	
Pen. Code § 1203.47	If a petition is granted under Welfare and Institutions Code § 781, all records relating to the violation or violations of subdivision (b) of Section 647 or of Section 653.22, or both, shall be sealed.
<b>Dismissal and sealing of legally invalid convictions</b>	
Health and Saf. Code § 11361.8(e), (f)	Specified marijuana convictions may be dismissed and sealed based on the conviction being legally invalid post-Proposition 64.

### **Sealing of Records in Juvenile Cases**

There is a specific statute and rule on sealing juvenile records. (Welf. & Inst. Code, § [781](#); Cal. Rules of Court, rule [5.830](#).) These allow a former ward of the court to petition the court to order juvenile records sealed. If the petition is granted, the court must order the sealing of all records described in section 781. The order must apply in the county of the court hearing the petition and all other counties in which there are juvenile records concerning the petitioner. (Cal. Rules of Court, rule [5.830\(a\)\(4\)](#).) All records sealed must be destroyed according to section [781\(d\)](#).

## **2.2 Confidential and Sealed Records in the Appellate Courts**

**Add text Re: rule 8.45**

### **2.2.1 Confidential records**

**Add text RE: rule 8.46**

### **2.2.2 Sealed records**

**Add text Re: rule 8.47**

## **2.3 Privacy in Opinions of the Courts of Appeal**

**Add text RE: rule 8.90**

## **2.4 Redaction of Trial and Appellate Court Records**

### **2.4.1 Redaction of Social Security numbers and financial account numbers**

California Rules of Court, rules [1.201](#) and [8.41](#) impose a duty on the parties or their attorneys to redact certain identifiers (i.e., Social Security Numbers and financial account numbers) from documents filed with the court. It is the responsibility of the filers to exclude or redact the identifiers. The rules state that court clerks will not review each pleading or other paper for compliance with the requirements of the rules. In an appropriate case, the court on a showing of good cause may order a party filing a redacted document to file a *Confidential Reference List* (form [MC-120](#)) identifying the redacted information. This form is confidential.

#### **2.4.2 Redaction of Social Security Numbers from documents filed in dissolution of marriage, nullity of marriage, and dissolution cases**

In general, petitioners and respondents may redact any social security number from any pleading, attachment, document, or other written materials filed with the court pursuant to a petition for dissolution of marriage, nullity of marriage, or legal separation. (Family Code, § 2024.5(a).) However, an abstract of support judgment, the form required pursuant to Family Code section 4014, or any similar form created for the purpose of collecting child or spousal support payments may not be redacted. (Family Code, § 2024.5(b).)

#### **2.4.3 Abstracts of judgment or decrees requiring payment of money**

The contents of an abstract of judgment or a decree requiring the payment of money are prescribed by Code of Civil Procedure section 674. The section provides that any judgment or decree shall contain *the last four digits* of the social security number and the driver's license number of the judgment debtor if they are known to the judgment creditor. (Code Civ. Proc., § [674\(a\)\(6\)](#).)

#### **2.4.4. Redaction of information about victims or witnesses in criminal cases**

Law enforcement agencies are prohibited from disclosing the address and phone number of a witness or victim to an arrestee or potential defendant. (Pen. Code, § [841.5](#).) Similarly, defense counsel may not disclose the address or telephone number of a victim or witness to the defendant, his or her family, or anyone else. (Penal Code, § section [1054.2](#)) This information may be contained in police reports and other documents filed with the courts. It is recommended that courts require that the addresses and telephone numbers of victims and witnesses be redacted *before* any document containing that information is filed with the court or used in a judicial proceeding.

### **2.5 Destruction of Records**

#### **2.5.1 Destruction of criminal records**

##### **Records of arrest or conviction for marijuana related offenses**

These records include all offenses under Health & Saf. Code § 11357, § 11360(b), and any records pertaining to the arrest and conviction of any person under 18 for violations under Health & Saf. Code §§ 11357-11362.9, except for § 11357.5. These records must be destroyed two years from either the date of conviction, the date of arrest if there was no conviction, or two years upon release from custody for persons incarcerated pursuant to the subdivision. (Health & Saf. Code, § [11361.5\(a\)](#).) Records associated with violations of section 11357(d) shall be retained until the offender turns 18, at which point they are also to be destroyed. (Health & Saf.

Code, § [11361.5\(a\)](#).) This rule is subject to exceptions for records from judicial proceedings and records related to an offender’s civil action against a public entity. (See Health & Saf. Code, § [11361.5\(d\)](#).) Public agencies are prohibited from using information in records subject to destruction, even if they have not yet been destroyed. (Health & Saf. Code, [11361.7\(b\)](#).)

### **3. Access to Court Records**

#### **3.1 Public Access to Trial Court Records**

Court records are presumed to be open, unless they are confidential as a matter of law or are sealed by court order. Confidential and sealed records are described in sections 2.1 and 2.2 and Appendix 1.

##### **3.1.1. Public access to paper court records at the courthouse**

Paper records that are not confidential or sealed are available at the courthouse for public inspection and copying. These paper records in the past were often costly to locate, inspect, and copy. The difficulties and expenses involved in obtaining these paper records impeded public access but also provided an added level of privacy. This important practical effect of older court business practices was reflected in the “doctrine of practical obscurity,” which recognized that obscurity could serve positive purposes with respect to protecting privacy interests.

Increasingly courts are relying on records created and maintained in electronic format. These records can be searched and made accessible remotely. Thus, if the benefits of “practical obscurity” are to be preserved, this will no longer be a by-product of old paper-based business practices. Instead, providing privacy protection through differential ease of access to court records is a conscious policy choice and requires carefully planned implementation.

##### **3.1.2 Electronic court records**

Rules [2.500–2.507](#) of the California Rules of Court first adopted in 2002 are intended to provide the public with reasonable access to trial court records that are maintained in electronic form while protecting privacy interests. These rules prescribe how the public may access electronic records both at the courthouse and remotely.

The rules are not intended to give the public a right of access to any electronic record that they are not otherwise entitled to access in paper form, and do not create any right of access to records sealed by court order or confidential as a matter of law. These rules apply only to trial court records and only to access to court records by the public. They do not prescribe the access to court records by a party to an action or proceeding, by the attorney for a party, or by other persons or entities that may be entitled to such access by statute or rule.

##### **3.1.3 Courthouse and remote access to electronic records**

The law requires that court records maintained in electronic form “shall be made reasonably accessible to all members of the public for viewing and duplication as the paper records would have been accessible.” (Gov. Code, § [68150\(l\)](#).) Electronic access must be available at the courthouse and may also be made available remotely.

If a court maintains records in electronic form, it must provide a means for the public to view those records at the courthouse. “Unless access is otherwise restricted by law, court records maintained in electronic form shall be viewable at the courthouse, *regardless of whether they are also accessible remotely.*” (Gov. Code, § [68150\(l\)](#) (emphasis added)).

### **3.1.4 Access by type of record**

There are some important restrictions on the records that may be made available remotely that do not apply to records at the courthouse. By rule of court, the following types of court records may not be made available remotely to the public:

- (1) Records in a proceeding under the Family Code, including proceedings for dissolution, legal separation, and nullity of marriage; child and spousal support proceedings; child custody proceedings; and domestic violence prevention proceedings;
- (2) Records in a juvenile court proceeding;
- (3) Records in a guardianship or conservatorship proceeding;
- (4) Records in a mental health proceeding;
- (5) Records in a criminal proceeding;
- (6) Records in a civil harassment proceeding under Code of Civil Procedure section 527.6;
- (7) Records in a workplace violence prevention proceeding under Code of Civil Procedure section 527.8;
- (8) Records in a private postsecondary school violence prevention proceeding under Code of Civil Procedure section 527.85;
- (9) Records in an elder or dependent adult abuse prevention proceeding under Welfare and Institutions Code section 15657.03; and
- (10) Records in proceedings to compromise the claims of a minor or a person with a disability.

(See rule [2.503\(c\)](#).) As this list indicates, many of the types of cases whose records that are by deliberate policy not made readily available remotely to the public involve sensitive private personal and financial information about children, elderly and disabled persons, and victims of crime and violence.

### **3.1.5 Remote access in high-profile criminal cases**

Notwithstanding the general restriction against providing criminal records remotely in rule [2.503\(c\)](#), under rule [2.503\(e\)](#), the presiding judge or a designated judge may order the records of a high-profile criminal case to be posted on the court’s website to enable faster and easier access to these records by the media and public. This rule specifies several factors that judges must consider before taking such action. One of the factors to be considered is: “The privacy interests of parties, victims, witnesses, and court personnel, and the ability of the court to redact sensitive personal information.” (Rule [2.503\(e\)\(1\)\(A\)](#).) Prior to posting, staff should, to the extent feasible, redact any confidential information contained in the court documents in accord with California Rules of Court, rule [2.503\(e\)\(2\)](#). In addition, five days’ notice must be provided to the parties and the public before the court makes a determination to provide electronic access under the rule.

### **3.1.6 Case-by-case access**

The 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 party, and only on a case-by-case basis. (Rule [2.503\(f\)](#).)

### **3.1.7 Bulk data**

The court may provide bulk distribution of only its electronic records of a calendar, index, or register of actions. “Bulk distribution” means distribution of all, or a significant subset, of the court’s electronic records. (Rule [2.503\(g\)](#).)

### **3.1.8 Access to calendars, indexes, and registers of action**

Courts that maintain records in electronic form must, to the extent feasible, provide—both at the courthouse and remotely—access to registers of action, calendars, and indexes. (Cal. Rules of Court, rule [2.503\(b\)](#).) The minimum contents for electronically accessible court calendars, indexes, and registers of action are prescribed by rule. (See rule [2.507\(b\)](#).) This enables the public to obtain access to court records in an effective, meaningful way.

There is also a rule on what information must be *excluded* from court calendars, indexes, and registers of action; the information to be excluded includes social security numbers, financial information, arrest and search warrant information, victim and witness information, ethnicity, age, gender, government (i.e., military) I.D. numbers, driver’s license numbers, and dates of birth. (See rule [2.507\(c\)](#).) Thus, the rule on court calendars, indexes, and registers of action explicitly recognizes the parties to lawsuits have important privacy rights that should not be compromised by easily and unnecessarily providing large amounts of private information.

### **3.1.9 Retention of user access information**

[To be added. This might cross-reference website policy.]

## **3.2 Public access to appellate court records**

### **3.2 Public Access to Records in the Courts of Appeal**

#### **3.2.1. Public access to paper court records at the courthouse (rule 8.83(c))**

#### **3.2.2 Public access to electronic court records at the courthouse (rule 8.83(b))**

#### **3.2.3 Remote public access to court records (rule 8.83(b)–(d))**

#### **3.2.4 Retention of user access information**

## **3.3 Remote access of parties and their attorneys to court records**

[To be added to a subsequent version of the Resources Guide]

### **3.4 Remote access of justice partners to court records**

[To be added to a subsequent version of the Resources Guide]

### **3.5 Remote access by other courts to a court's records**

[To be added to a subsequent version of the Resources Guide]

### **3.6 Access to California Courts Protective Order Registry (CCPOR)**

#### **3.6.1 Access to form CLETS-001 through CCPOR**

[To be added to a subsequent version of the Resources Guide]

### **3.7 Third-party storage**

## **4. Financial Privacy in Civil and Criminal Cases**

The constitutional right to privacy extends to one's personal financial information. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal. 3d 652, 656.) In court proceedings, this right of financial privacy is often protected by a particular statute or rule, as illustrated by the examples below. However, the right of financial privacy is not unlimited in scope. As discussed in the example in section 4.4 below, a court has concluded that Family Code section 2014.6, the statute relied on by a participant in a divorce proceeding to close the records in that proceeding, was constitutionally overbroad. (See *In re Marriage of Burkle* (2006) 135 Cal. App.4th 1045, 1048.) Also, the Legislature has not made the Financial Privacy Act of 1977 applicable to the courts.

### **4.1 Fee Waivers**

In civil cases, an application for an initial fee waiver, which contains personal financial information, is confidential. (Cal. Rules of Court, rule [3.54](#).) Only the court and authorized court personnel, persons authorized by the applicant, and persons authorized by order of the court may have access to the application. No person may reveal any information contained in the application except as authorized by law or order of the court. However, the order granting a fee waiver is not confidential.

### **4.2 Requests for Funds**

In criminal cases, an indigent defendant requests for funds for payment of investigators, experts, and others to aid in presenting or preparing the defense in certain murder cases is confidential. This exemption applies to defendants in capital and life without parole murder cases under Penal Code section [190.05\(a\)](#). (Pen. Code, § [987.9](#).)

### **4.3 Criminal Defendant's Statement of Assets**

*Defendant's Statement of Assets* (form CR-115) is a mandatory Judicial Council form. It is confidential in the same manner as probation reports. (See Pen. Code, § [1202.4](#).)

## **4.4 Information about the Financial Assets and Liabilities of Parties to a Divorce Proceeding**

In *In re Marriage of Burkle* (2006) 135 Cal. App.4th 1045, the court considered the constitutionality of Family Code section 2014.6 that requires a court, on the request of a party to a divorce proceeding, to seal any pleading that lists and provides the location or identifying information about the financial assets of the parties. The court concluded that section 2024.6 is unconstitutional on its face. The court stated: “While the privacy interests protected by section 2014.6 may override the First Amendment right of access in an appropriate case, the statute is not narrowly tailored to serve overriding privacy interests. Because less restrictive means exist to achieve the statutory objective, section 2014.6 operates as an undue burden on the First Amendment right of public access to court records.” (*Id.* at page 1048.)

## **4.5 Information Privacy Act Not Applicable to the Courts**

A general protection for individuals’ privacy rights is contained in the Information Practices Act of 1977. However, recognizing the special role that courts play in conducting the people’s business and the need for openness in conducting that business, the Legislature has expressly exempted the courts from the application of that Act. (See Civ. Code, §1798.3(b)(1) [excluding from the definition of “agency” covered by the Information Privacy Act of 1977 “[a]ny agency established under Article VI of the California Constitution”—that is, the courts]).

## **4.6 Privacy in the Payment of Fines and Fees**

[To be added. Best practices consistent with Civil Code.]

### **4.6.1 Credit card information**

#### **4.6.1.1 Credit card information collected online**

#### **4.6.1.2 Credit card information collected at the counter**

### **4.6.2 Retention of credit card information**

### **4.6.3 Legal restrictions on credit card information**

### **4.6.4 Use of vendors to collect fines and fees**

## **4.7 Taxpayer Information**

### **4.7.1 Confidential statements of taxpayer’s Social Security Numbers**

Confidential Statements of Taxpayer’s Social Security Number on mandatory Judicial Council forms (forms [WG-021](#) and [WG-025](#)) for use in connection with wage garnishments are confidential.

#### **4.7.2 Income tax returns in child support cases**

In a proceeding involving child, family, or spousal support, if a judge finds that a tax return is relevant to disposition of the case, the tax return must be sealed and maintained as a confidential record of the court. (Fam. Code, § 3552.)

## **5. Privacy in Judicial Administrative Records**

### **5.1 Public access to judicial administrative records (rule 10.500)**

[Rule 10.500](#) provides for public access to “judicial administrative records” (Rule 10.500(c)(2)), which includes records of budget and management information related to the administration of the courts.

#### **5.1.1 Policy**

The rule is based on the California Public Records Act (“CPRA”) (Government Code section 6250 et seq.) and is intended to be broadly construed to further the public’s right of access. Unless otherwise indicated, the terms used in this rule have the same meaning as under the [Legislative Open Records Act](#) (Gov. Code, § 9070 et seq.) and the [California Public Records Act](#) (Gov. Code, § 6250 et seq.) and must be interpreted consistently with the interpretation applied to the terms under those acts.

#### **5.1.2 Scope of access**

[Rule 10.500](#) covers only judicial administrative records and does not govern the public’s right to access “adjudicative records,” which are “writings” prepared, used, or filed in a court proceeding, relate to judicial deliberation, or the assignment or reassignment of cases of justices, judges, subordinate judicial officers, and the assignment or appointment of counsel by the court. (Rule 10.500(c)(1).) As discussed above, adjudicative records, or court records, are presumptively public, subject to exceptions as discussed in Sections 2-3 above.

Disclosable judicial administrative records include any non-adjudicative records (writings) containing information that relates to “the conduct of the people’s business that is prepared, owned, used, or retained by a court, regardless of the writing’s physical form or characteristics.” (Rule 10.500(c)(2).) However, personal information that is not related to the conduct of the people’s business—or material falling under a statutory exemption (see below)—is not disclosable and can be redacted from the public records that are produced or presented for review. (See *City of San Jose v. Superior Court* (2017) 2 Cal.5<sup>th</sup> 608.) This limitation on disclosure protects the privacy rights of government employees involved in creating public records.

Even if electronic communications are conducted on an agency employee or official’s personal device or personal email account, they are disclosable if they pertain to the people’s business and are prepared, owned, used, or retained by a court or its personnel. (See Rule 10.500(b)(5); *City of San Jose v. Superior Court* (2017) 2 Cal.5<sup>th</sup> 608.) On the other hand, if the documents relate to purely personal information, that content is not disclosable. Pursuant to a 10.500 request, courts

may ask their employees to search their own files, segregate public records from personal records, and submit an affidavit with sufficient factual basis for determining whether the contested item are public records or personal materials. (*Id.*)

### **5.1.3 Exemptions and waiver of exemptions**

[Rule 10.500\(f\)](#) provides 12 categories of records that a court may exempt from disclosure. For the purpose of this Resource Guide, the most important of these categories is the exemption for personnel, medical, or similar files, or other personal information whose disclosure would constitute an unwarranted invasion of personal privacy. (Rule 10.500(f)(3).) Some of the other exempt categories include records that relate to pending or anticipated claims or litigation to which a judicial branch entity or its personnel are parties (Rule 10.500(f)(2)); disclosure that is exempt or prohibited under state or federal law, including under the California Evidence Code relating to privilege or by court order in a court proceeding (Rule 10.500(f)(5); records that would reveal or compromise court security or safety of court personnel (Rule 10.500(f)(6)); trade secrets, or confidential commercial or financial information (Rule 10.500(f)(10) and the catch-all exemption where, on the facts of a specific request, the public interest in withholding the record clearly outweighs the public interest in disclosure. (Rule 10.500(f)(12).)

A judicial branch entity's or judicial branch personnel's disclosure of a judicial administrative record that is exempt from disclosure pursuant to rule 10.500(f) or law waives the exemptions as to that specific record. (Rule 10.500(h).) However, waiver does not apply to disclosures made in certain contexts as discussed in rule 10.500(h).

## **5.2 Criminal History Information**

Summaries of criminal history information (criminal history information rap sheets) are confidential. (*Westbrook v. Los Angeles* (1994) 27 Cal.App.4th 157, 164; Pen. Code, §§ [11105](#) and [13300–13326](#).) Public officials have a duty to preserve the confidentiality of a defendant's criminal history. (*Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 76.) Unauthorized disclosure of criminal history violates a defendant's privacy rights under the California Constitution. (*Ibid.*) Courts have upheld the confidentiality assigned to criminal history records. (See, e.g., *Westbrook v. Los Angeles* (1994) 27 Cal.App.4th 157 [unauthorized private company was denied access to municipal court information computer system].)

## **6. Privacy of Witnesses, Jurors, and Other Non-parties**

### **6.1 Witness and Victim Information**

#### **6.1.1 Confidential information about witnesses and victims in police, arrest, and investigative reports**

The court and the district attorney shall establish a mutually agreeable procedure to protect the confidential information of any witness or victim contained in police reports submitted to the court in support of a complaint, indictment, information, search warrant or arrest warrant. (Pen. Code, § [964](#).)

### **6.1.2 Victim impact statements**

Victim impact statements filed with the court must remain under seal until imposition of judgment and sentence, except that the court, the probation officer, and counsel for the parties may review such statements up to two days before the date set for imposition of judgment and sentence. (Pen. Code, § [1191.15\(b\)](#).) Victim impact statements shall not be otherwise reproduced in any manner. (Pen. Code, § [1191.15\(c\)](#).)

### **6.1.3 Information about victims, witnesses, and others**

Law enforcement agencies are prohibited from disclosing the address and phone number of a witness or victim, or an arrestee or potential defendant. (Pen. Code, § [841.5](#).) Similarly, defense counsel may not disclose the address or telephone number of a victim or witness to the defendant or his or her family. (Penal Code, § section [1054.2](#).) If this information is contained in documents filed with the courts, it should be redacted before the documents are filed.

### **6.1.4 Identity of sex offense victims**

At the request of a victim of an alleged sexual offense, the court may order that the victim be treated anonymously. Upon a proper showing, the judge may order the identity of the victim in all records and during all proceedings to be either “Jane Doe” or “John Doe” if the judge finds that such an order is reasonably necessary to protect the alleged victim’s privacy and that such measures will not unduly prejudice the prosecution or defense. (Pen. Code, § [293.5](#).)

## **6.2 Juror Information**

### **6.2.1 Juror questionnaires of those jurors not called**

The questionnaires of jurors not called to the jury box for voir dire are not open to the public. (*Copley Press, Inc. v. Superior Court* (1991) 228 Cal.App.3d 77, 87–88); but cf. *Bellas v. Superior Court of Alameda County* (2000) 85 Cal.App.4th 636, 645, fn. 6 [suggesting a contrary rule].)

### **6.2.2 Juror questionnaires answered under advisement of confidentiality**

These records are not open to the public. (*Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 493-494 [jurors were told their answers on questionnaire were confidential].)

### **6.2.3 Sealed juror records in criminal courts**

After the jury reaches a verdict in a criminal case, the court’s record of personal juror identifying information (including names, addresses, and telephone numbers) must be sealed. (Code Civ. Proc., § [237\(a\)\(2\)](#).) This is often accomplished by replacing juror names with numbers. Indeed, that is how appellate court records contain the relevant information while conforming to the requirements of Code of Civil Procedure section [237](#). The defendant or his or her counsel can petition the court for access to this information to aid in developing a motion for a new trial or for any other lawful purpose. (Code Civ. Proc., § [206\(f\)](#).)

#### **6.2.4 Records of grand jury proceedings**

These records are not open to the public unless an indictment is returned. If an indictment is returned, records of the grand jury proceeding are not open to the public until 10 days after a copy of the indictment has been delivered to the defendant or his or her attorney. (Pen. Code, § [938.1\(b\)](#); *Daily Journal Corp. v. Superior Court* (1999) 20 Cal.4th 1117, 1124–1135.) If there is a “reasonable likelihood” that release of all or part of the transcript would prejudice the accused’s right to a fair trial, a judge may seal the records. (Pen. Code, §§ [938.1](#), [929](#); see *Rosato v. Superior Court* (1975) 51 Cal.App.3d 190.) Notwithstanding the confidential status of a record, in civil grand juries, a judge may order disclosure of certain evidentiary materials, as long as information identifying any person who provided information to the grand jury is removed. (Pen. Code, § [929](#).) Also, after an indictment is returned, the judge may order disclosure of nontestimonial portions of the grand jury proceedings to aid preparation of a motion to dismiss the indictment. (*People v. Superior Court (Mouchaourab)* (2000) 78 Cal.App.4th 403, 434–436.)

#### **6.2.5 Courts’ inherent power to protect jurors**

Courts may exercise their discretion to seal juror records where a “compelling interest” exists, such as protecting jurors’ safety or privacy, protecting litigants’ rights, or protecting the public from injury. (*Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258, 262; Code Civ. Proc., § [237](#); see *Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1091.) Thus any juror information that a judge orders sealed is not open to the public.

### **6.3 Attorney information**

### **6.4 Vexatious litigant list**

## **7. Privacy Protection for Judicial Officers**

### **7.1 Privacy Protection Guidance for Judicial Officers**

Government Code section 6254.21 prohibits persons or businesses from publicly posting or displaying on the Internet the home address and phone number of a judicial officer, if he or she has made a written demand of that person or business not to disclose that information. Upon request of a California trial court judge, commissioner, or referee, the Judicial Privacy Protection Program of the Judicial Council’s Security Operations unit will make such written demand to a predetermined list of major online data vendors. (See Appendix\_\_ for attached form authorizing the Judicial Council to make written demand on behalf of a trial court judge, commissioner, or referee.) For further information, contact [securityoperations@jud.ca.gov](mailto:securityoperations@jud.ca.gov).

## **8. Privacy and the Electronic Court: Best Practices**

## **8.1 Electronic Filing and Service, and Access to Protected Private Information**

### **8.1.1 Electronic identification and verification**

[Text to be added] (For possible SRL principles, see

<http://www.srln.org/system/files/attachments/LSC%20Best%20Practices%20in%20E-Filing.pdf>]

### **8.1.2 E-filing directly with the court**

### **8.1.3 E-filing through EFSPs and vendors**

### **8.1.4 E-service lists and other information**

## **8.2 Protected Personal Information Held in Cloud-based Storage Systems**

## **8.3 Case and Document Management Systems**

### **8.3.1 Vendor-serviced CMS/DMS**

### **8.3.2 Metadata**

## **9. Privacy and Court-related Services: Best Practices**

### **9.1 California Court Self-help Centers**

### **9.2 Family Law Facilitator Offices**

### **9.3 Family Court Services**

### **9.4 Civil Court-ordered Mediation Services**

### **9.5 Document Assembly Programs**

## **10. Privacy and Data Exchanges with Justice Partners**

### **10.1 Data Exchanges with Local Justice Partners**

### **10.2 Data Exchanges with State Justice Partners**

### **10.3 Data Exchanges with Federal Justice Partners**

## **10.4 Inter-state Data Exchanges**

## **10.5 Intra-branch Data Exchanges**

## **10.6 CCPOR**

# **11. Court Websites: Best Practices**

California courts use public websites extensively to conduct their business. All the trial and appellate courts have websites. These websites perform essential services. For example, they provide the public with key information about the courts. They provide access to local rules and forms needed to carry on cases. They provide litigants with information about hearing dates and other calendar information. And they provide information to jurors about when and where to appear. Recently, websites have also become an increasingly important means for transacting business, such as paying for traffic tickets or scheduling hearings.

## **11.1 Privacy Statements**

Like other institutions employing websites, courts need to advise the public and other users of the court's privacy policies with regard to the use of their websites. Courts need to inform users about the information that is collected. A privacy statement on the website will explain how the court gathers information, how it uses it, and how the court will protect users' privacy.

Each court will develop its own Privacy Statement relating to its website. For courts to consider as they develop or revise their statements, a Model Privacy Statement is attached as Appendix \_\_. In addition, a Model Terms of Use is attached as Appendix \_.

## **11.2 Retention and Tracking of User Information and Data**

### **11.2.1 Use of cookies on court websites**

### **11.2.2 Self-help center portals**

# **12. Video and Surveillance: Best Practices**

## **12.1 Photographing, Recording, and Broadcasting in Court**

California Rules of Court, [rule 1.150](#) permits photographing, recording, and broadcasting of courtroom proceedings pursuant to a judge's ruling on media requests and sets forth factors to be considered by a judge in determining whether to grant media requests for such activity. A judge may not permit media coverage of proceedings held in chambers; proceedings closed to the

public; jury selection; jurors or spectators; or conferences between an attorney and a client, witness, or aide; between attorneys; or between counsel and the judge at the bench. (Rule 1.150(e)(6).)

## **12.2 Video Remote Interpreting**

### **12.3 Security Cameras in Public Areas**

The Judicial Council has recommended best practices and policies for security camera recordings in the courthouse, covering the retention schedule, downloading, disclosures to the public or other parties; and retention schedules for downloaded recordings. (See Fact Sheet: Recommendations on Security Camera Recordings Policy and Best Practices (Oct. 2015).) Further questions may be directed to Ed Ellestad, Supervisor, Judicial Council Security Operations.

## **13. Privacy and Information Security: Best Practices**

### **13.1 Information Systems Controls Framework Template**

### **13.2 How to Use the Information Systems Control Framework**

## **14. Court Management of Protected Private Information: Best Practices**

[[To be added. Best practices following Civil Code section 1798 et seq.]]

### **14.1 Developing a Local Court Privacy Guide**

### **14.2 Establishing Local Privacy Procedures and Systems**

### **14.3 Identifying Key Court Personnel**

### **14.4 Training Court Staff**

### **14.5 Periodic Review of Privacy Procedures and Systems**

## **15. Responding to Data Breaches: Best Practices**

### **15.1 Developing an incident response plan**

### **15.2 Noticing affected persons**

[Note: Review Civil Code 1798.92 governing business security breach notices]

#### **15.2.1 Contents of notice**

#### **15.2.2 Means of providing notice**

### **15.3 Contacting Law Enforcement**

### **15.4 Contacting credit reporting agencies**

### **Appendices**

Appendix A: List of relevant statutes and rules

Appendix B: Model local court privacy guide

Appendix C: Sample privacy statement for court websites

Appendix D: Sample terms of use for court websites

Appendix E: Sample notice of data breach