



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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### MEMORANDUM

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<b>Date</b> September 22, 2017	<b>Action Requested</b> Please review
<b>To</b> Information Technology Advisory Committee, Rules and Policy Subcommittee	<b>Deadline</b> September 25, 2017
<b>From</b> Patrick O'Donnell, Principal Managing Attorney Andrea L. Jaramillo, Attorney Legal Services, Judicial Council	<b>Contact</b> Andrea L. Jaramillo 916-263-0991 phone andrea.jaramillo@jud.ca.gov
<b>Subject</b> Rules Proposal (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)	

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#### **Background**

This spring, the Information Technology Advisory Committee (ITAC) and Civil and Small Claims Advisory Committee (CSCAC) circulated a rules proposal for public comment that would amend several rules related to electronic service and electronic filing found in title 2, division 3, chapter 2 of the California Rules of Court. The proposed amendments are intended to improve the organization of the rules, improve the rules' consistency with the Code of Civil Procedure, and reduce redundancies between the rules and the Code of Civil Procedure. Specifically, the rules proposal would ensure consistency and redundancy between the rules and Code of Civil Procedure section 1010.6 (section 1010.6), which provides statutory authority for permissive and mandatory electronic filing and service. The proposal conforms the rules to changes to section 1010.6 and the addition of section 1013b to the Code of Civil Procedure in legislation that the Judicial Council sponsored in 2017 to ensure the rules are current when the

legislation goes into effect. The proposal also makes limited organizational changes to the rules to improve their logical ordering.

ITAC's Rules and Policy Subcommittee and the CSCAC's Unlimited Case and Complex Litigation Subcommittee considered the proposal and the comments received on May 23, 2017. A number of the proposed rule changes are designed to align with amendments to Code of Civil Procedure section 1010.6 and the addition of Code of Civil Procedure section 1013b. These legislative changes were part of Judicial Council-sponsored legislation introduced this year as Assembly Bill 976. As of the date of the subcommittees' May 23, 2017 meeting, the Assembly had made changes to AB 976 that would have necessitated additional rule changes, beyond the original proposal, to be effective January 1, 2018. The subcommittees held the rule proposal pending the outcome of AB 976.

AB 976 continued to be amended throughout the legislative session and was ultimately passed on September 14, 2017 and is awaiting the governor's signature. The final version of AB 976 retained the changes to Code of Civil Procedure with which the proposed rule amendments were designed to be consistent. The final version of AB 976 also added language that will necessitate additional rule changes, but the required effective date for those rule changes moved from January 1, 2018 to January 1, 2019.<sup>1</sup> Accordingly, the proposed rule amendments are the same as they were when the subcommittees met and reviewed the proposal and comments on May 23, 2017. There is no new material for the subcommittees to consider.

Staff have prepared a draft Judicial Council report for the subcommittees' reference and a copy of the draft report (minus the report's attachments) is included with the attachments to this memo.

### **Staff Recommendations**

Recommend the proposed rule amendments for Judicial Council adoption at its November 2017 meeting.

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<sup>1</sup> Specifically, AB 976 amends Code of Civil Procedure section 1010.6 to require, effective January 1, 2019, that parties expressly consent to electronic service. Under AB 976, "The act of electronic filing shall not be construed as express consent." This will necessitate a change to rule 2.251(b) during next year's rules cycle because the rule allows for the act of electronic filing to serve as consent for electronic service. AB 976 also requires the Judicial Council to develop a form for withdrawal of consent.

In addition, AB 976 requires that the Judicial Council adopt a rule by January 1, 2019 setting forth a procedure for electronic signatures on electronically filed documents.

**Attachments and Links**

1. Text of proposed amendments to the California Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259 with drafter's notes.
2. Comment chart
3. AB 976  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB976](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB976)
4. Draft Judicial Council Report (minus attachments to the report)

Section 1719 of the Civil Code and sections 405.22, 405.23, 594, 659, 660, and 663a of the Code of Civil Procedure would be amended, effective January 1, 2019, to read:

1 **Rule 2.250. Construction and definitions**

2  
3 (a) \* \* \*

4  
5 (b) **Definitions**

6  
7 As used in this chapter, unless the context otherwise requires:

- 8  
9 (1) A “document” is a pleading, a paper, a declaration, an exhibit, or another  
10 filing submitted by a party or other person, or by an agent of a party or other  
11 person on the party’s or other person’s behalf. A document is also a notice,  
12 order, judgment, or other issuance by the court. A document may be in paper  
13 or electronic form.

14  
15 *Drafter’s Note: The following comments were received in response to the*  
16 *proposed amendments to Rule 2.250(b)(1).*

- 17  
18 • Litigation by the Numbers. “Rule 2.250(b)(1): I realize this language has  
19 been around for years, and is likely beyond the scope of the Invitation, but  
20 I am just now noticing it. Why is there a need to provide a specific  
21 definition of “document” for this chapter? The term is used in 157 different  
22 C.C.P. sections (including 1010.6) and has never before required  
23 definition. I suggest deleting it entirely. Alternatively, it should be revised.  
24 The phrase “or another filing submitted,” can easily be interpreted to mean  
25 that the term refers only to filed documents, i.e., not written discovery  
26 demands or responses. It would follow, then, that Rule 2.250(b)(2)’s  
27 definition of electronic service refers only to filed documents. This is  
28 obviously not the intent nor the practice.”
- 29  
30 • One Legal. “Page 8, (b)(1) “document”: This current definition of a  
31 document (...or another filing), including the additional language, could be  
32 construed as meaning a document that IS NOT a filing, notice, order,  
33 judgment or other issuance, cannot be eServed since (b)(2) below defines  
34 eService as “service of a document.” Interrogatories and Notices of  
35 Deposition are two (2) examples of documents that do not fall within the  
36 definition of a document as described in section (b)(1).”

37  
38 *Staff analysis:* These comments are beyond the scope of the changes to Rule  
39 2.250(b)(1) in this proposal. Staff are developing a report on public suggestions  
40 for rule changes to present to the Rules and Policy Subcommittee in the future,  
41 and will incorporate the recommended changes into the report.

- 1 (2) “Electronic service” is service of a document on a party or other person by  
2 either electronic transmission or electronic notification. Electronic service  
3 may be performed directly by a party or other person, by an agent of a party  
4 or other person, including the party’s or other person’s attorney, through an  
5 electronic filing service provider, or by a court.  
6
- 7 (3) “Electronic transmission” means the transmission of a document by  
8 electronic means to the electronic service address at or through which a party  
9 or other person has authorized electronic service.  
10
- 11 (4) “Electronic notification” means the notification of a party or other person that  
12 a document is served by sending an electronic message to the electronic  
13 service address at or through which the party or other person has authorized  
14 electronic service, specifying the exact name of the document served and  
15 providing a hyperlink at which the served document can be viewed and  
16 downloaded.  
17
- 18 (5) “Electronic service address” ~~of a party~~ means the electronic address at or  
19 through which the party or other person has authorized electronic service.  
20
- 21 (6) An “electronic filer” is a party or other person filing a document in electronic  
22 form directly with the court, by an agent, or through an electronic filing  
23 service provider.  
24
- 25 (7) “Electronic filing” is the electronic transmission to a court of a document in  
26 electronic form. For the purposes of this chapter, this definition concerns the  
27 activity of filing and does not include the processing and review of the  
28 document, and its entry into the court records, which are necessary for a  
29 document to be officially filed.  
30
- 31 (8) An “electronic filing service provider” is a person or entity that receives an  
32 electronic filing from a party or other person for retransmission to the court  
33 or for electronic service on other parties or persons, or both. In submission of  
34 filings, the electronic filing service provider does so on behalf of the  
35 electronic filer and not as an agent of the court.  
36

37 *Drafter’s Note: The following comments were received in response to the*  
38 *proposed amendments to Rule 2.250(b)(8).*

- 39
- 40 • [Litigation by the Numbers](#). “Rule 2.250(b)(8): Is the insertion of “or  
41 persons” supposed to be “or other persons”?”  
42

1 *Staff analysis:* Staff recommend adopting the modification recommended in the  
2 comment for the sake of clarity. The “other” in “other parties or persons” is meant  
3 to modify both parties and persons, but the commenter’s recommended  
4 language is clearer and removes possible ambiguity. The modified language  
5 would read:

6  
7 An “electronic filing service provider” is a person or entity that receives an  
8 electronic filing from a party or other person for retransmission to the court  
9 or for electronic service on other parties or other persons, or both. In  
10 submission of filings, the electronic filing service provider does so on behalf  
11 of the electronic filer and not as an agent of the court.

12  
13 ~~(9) “Regular filing hours” are the hours during which a court accepts documents~~  
14 ~~for filing at its filing counter.~~

15  
16 ~~(10) “Close of business” is 5 p.m. or any other time on a court day at which the~~  
17 ~~court stops accepting documents for filing at its filing counter, whichever is~~  
18 ~~earlier. The court must provide notice of its close of business time~~  
19 ~~electronically. The court may give this notice in any additional manner it~~  
20 ~~deems appropriate.~~

21  
22 *Drafter’s Note:* The following comments were received in response to the  
23 proposed amendments to Rule 2.250(b)(9)-(10).

- 24  
25 • OneLegal. “Page 9, (b)(9) and (b)(10) “Regular filing hours and Close of  
26 business”: We completely agree with removing these two sub-sections.  
27 They were confusing, especially since many courts have different hours  
28 on different days.”

29  
30 *Staff analysis:* No analysis needed.

- 31  
32 • Superior Court of San Diego County. “The proposal to eliminate  
33 references to “close of business” and “regular filing hours” in rule  
34 2.250(b)(9) and (10) appears to provide different levels of access to the  
35 courts. A litigant without access to the internet would be limited to the  
36 office hours of a legal aid provider or the public library, neither of which  
37 are typically open until midnight.

38  
39 This would also provide different levels of access for counties with  
40 permissive e-filing. Those who do not utilize e-filing would be limited to  
41 submit filings in a drop-box by 5 p.m. or when the courthouse closes.”  
42

1 *Staff analysis:* The rule follows the current version of Code of Civil Procedure  
2 section 1010.6, which sets an electronic filing deadline of the earlier of 5:00 p.m.  
3 or whenever the filing counter closes. (Code Civ. Proc., § 1010.6(b)(3).) AB 976  
4 will change the electronic filing cut off time to 11:59:59 p.m. if it is enacted into  
5 law. Staff will update the subcommittee on whether AB 976 is enacted and if  
6 there are changes to it.

7  
8 The commenter is correct that a change to the electronic filing cut-off time will  
9 provide different levels of access for those with access to the internet until  
10 midnight than those without access to the internet until midnight. However, the  
11 current rules also create different levels of access: those who have access to the  
12 internet to handle their personal court business before 5:00 p.m. or the court's  
13 filing counter closing time, and those who do not. It also creates disparate filing  
14 deadlines throughout the state. Electronic filing until midnight will provide a  
15 uniform deadline throughout the state and greater access overall, even if levels  
16 of access differ between those that have internet access at until midnight and  
17 those that do not. Under the current rules and Code of Civil Procedure section  
18 1010.6, 5:00 p.m. represents the latest possible time someone can e-file. Many  
19 people must work until 5:00 p.m. and do not have internet access at work or are  
20 not allowed to use the internet for personal business at work. Such people would  
21 have to take time off work, not always paid, to leave earlier to submit their  
22 electronic filings. The 11:59:59 p.m. deadline expands the scope of access to  
23 later than 5:00 p.m. even if not, practically, until midnight for those that need to  
24 access the internet at a public venue like a library. There would still be a higher  
25 level of access because many libraries are open later than 5:00 p.m., even if not  
26 open until midnight.

27  
28 ***Drafter's Note:*** *In the Invitation to Comment, the advisory committee requested f*  
29 *specific comments about rule 2.250(b). Below is the request for specific*  
30 *comments followed by the specific comments received:*

31  
32 *Section 1010.6 and rule 2.250(b) contain definitions of "electronic service,"*  
33 *"electronic transmission," and "electronic notification." The rule 2.250(b)*  
34 *definitions mirror the section 1010.6 definitions, but the rule provides a*  
35 *more comprehensive scheme of definitions than does section 1010.6. The*  
36 *advisory committee retained the duplicative definitions to preserve this*  
37 *comprehensive scheme.*

38  
39 *With respect to the definitions of "electronic service," "electronic*  
40 *transmission," and "electronic notification" in rule 2.250(b), the advisory*  
41 *committee seeks comments on whether it should:*

- 42  
43
  - *Continue to include the terms and their definitions in the rules;*

- 1 ○ *Eliminate the terms and their definitions;*
- 2 ○ *Retain the terms, but refer back to section 1010.6 for the definitions*
- 3 *(e.g., “Electronic service’ has the same meaning as defined in Code of*
- 4 *Civil Procedure section 1010.6”); or*
- 5 ○ *Modify the definitions in some other way.*

- 6
- 7 • Litigation by the Numbers. “With regard to the specific comments
- 8 requested, I agree with the third option: retain the terms but refer to
- 9 1010.6.”
- 10
- 11 • OneLegal. “Page 7, Request for Specific Comments: We like the 3rd bullet
- 12 point option “Retain the terms, but refer back to section 1010.6...” While
- 13 eService is not a new concept to us, it is to many law firms and so to
- 14 define it is helpful. Our eService trainings touch on the rule and statute for
- 15 that reason which is why we think eliminating these definitions entirely
- 16 would be a bad idea. Keeping it in both the rule and the statute, however,
- 17 *is unnecessary.”*
- 18
- 19 • Orange County Bar Association. “The OCBA is confused by the request
- 20 for specific comments: Some members believe that the request seeks
- 21 clarification as to whether all definitions contained in Rule 2.250(b) should
- 22 be retained while other members believe the request only seeks advice on
- 23 keeping the three statutory definitions in one form or another. With regard
- 24 to the request for specific comments, the OCBA believes that it would be
- 25 preferable for ease of administration to retain each of the terms, but refer
- 26 back to section 1010.6 for the statutory definitions and also preferable to
- 27 retain the additional non-statutory definitions at (1),(5),(6),(7), and (8) as
- 28 within the Council’s authority and helpful to the Court, parties, and other
- 29 persons.”
- 30
- 31 • State Bar of California Standing Committee on the Delivery of Legal
- 32 Services. “It is better to retain the duplicative terms and their definitions in
- 33 the rule so that practitioners and especially self-represented litigants have
- 34 the full comprehensive scheme without having to refer back to section
- 35 1010.6.”
- 36

37 *Staff analysis:* Code of Civil Procedure section 1010.6(a)(1)(A)–(C) define the

38 terms “electronic service,” “electronic transmission,” and “electronic notification.”

39 Rule 2.250(b) duplicates these definitions. Three of the commenters are in favor

40 of retaining the terms in rule 2.250(b), but modifying the definitions to refer to

41 Code of Civil Procedure section 1010.6 (e.g., “Electronic service’ has the same

42 meaning as defined in Code of Civil Procedure section 1010.6.”) The benefit of

43 this approach is that Code of Civil Procedure section 1010.6 and the rules will

1 never be out of sync and a change to the definitions in section 1010.6 will not  
2 necessitate a change in the corresponding definitions in the rules. However, it  
3 may be unlikely that the definitions will be changed often. The State Bar of  
4 California Standing Committee on the Delivery of Legal Services favors retaining  
5 the status quo. The benefit of this approach is that it is easier for practitioners  
6 and self-represented litigants to read through the definitions without having to  
7 look up cross-referenced material.

8  
9 If the subcommittee decides that the definitions should be modified, staff will  
10 develop a proposal for next year's regular rules cycle.

### 11 12 **Advisory Committee Comment**

13  
14 The definition of “electronic service” has been amended to provide that a party may effectuate  
15 service not only by the electronic transmission of a document, but also by providing electronic  
16 notification of where a document served electronically may be located and downloaded. This  
17 amendment is intended to modify the rules on electronic service to expressly authorize electronic  
18 notification as a legally effective alternative means of service to electronic transmission. This  
19 rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6,  
20 effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156  
21 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the  
22 appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which  
23 interpreted the rules as authorizing electronic transmission as the only effective means of  
24 electronic service.

### 25 26 **Rule 2.251. Electronic service**

#### 27 28 **(a) Authorization for electronic service**

29  
30 When a document may be served by mail, express mail, overnight delivery, or fax  
31 transmission, the document may be served electronically under Code of Civil  
32 Procedure section 1010.6 and the rules in this chapter.

33  
34 *Drafter's Note: The following comments were received in response to the*  
35 *proposed amendments to Rule 2.251(a).*

- 36  
37 • Litigation by the Numbers. “Rule 2.251(a): We unfortunately won't know  
38 how C.C.P. section 1010.6 will read until AB 976 is passed. The iteration  
39 drafted on 4/20/17 seems inconsistent with Rule 2.251(a). The  
40 amendment states: “(2) (A) If a document may be served by mail, express  
41 mail, overnight delivery, or facsimile transmission, electronic service of the  
42 document is not authorized unless a party or other person has expressly  
43 consented on the appropriate Judicial Council form to receive electronic

1 delivery in that specific action or the court has ordered electronic service  
2 on a represented party or other represented person under subdivision (c)  
3 or (d). (B) If a document is required to be served by certified or registered  
4 mail, electronic service of the document is not authorized.” I suggest that,  
5 in order not to be inconsistent with whatever C.C.P. section 1010.6  
6 ultimately says, Rule 2.251(a) be amended to something like: “A  
7 document may be served electronically where authorized by [C.C.P.  
8 section 1010.6].”  
9

10 *Staff analysis:* Rule 2.251(a) does not have changes in this proposal so the  
11 recommendation is outside the scope of the proposal. However, the commenter  
12 has identified a change to Code of Civil Procedure section 1010.6 in AB 976 that  
13 would necessitate a conforming rule change. Staff will update the subcommittee  
14 on whether AB 976 is enacted and if there are changes to it.  
15

16 **(b) Electronic service by consent of the parties**

- 17  
18 (1) Electronic service may be established by consent ~~of the parties in an action.~~  
19 A party or other person indicates that the party or other person agrees to  
20 accept electronic service by:  
21

22 *Drafter’s Note:* The following comments were received in response to the  
23 proposed amendments to Rule 2.251(b)(1).  
24

- 25 • Litigation by the Numbers. “Rule 2.251(b)(1): The first sentence should be  
26 deleted. I don’t believe that “established” has any meaning here.  
27 Electronic service is agreed to, authorized, effected ...what is “established”  
28 supposed to mean?”  
29

30 *Staff analysis:* The deletion of “established” is outside the scope of this proposal,  
31 but staff will add it to a report about public suggestions for future consideration by  
32 the subcommittee.  
33

- 34 (A) Serving a notice on all parties or other persons that the party or other  
35 person accepts electronic service and filing the notice with the court.  
36 The notice must include the electronic service address at which the  
37 party or other person agrees to accept service; or  
38

39 *Drafter’s Note:* The following comments were received in response to the  
40 proposed amendments to Rule 2.251(b)(1)(A).  
41

- 1 • Litigation by the Numbers. “Rule 2.251(b)(1)(A): The first insertion of “or  
2 other persons” is incorrect; service of the notice must be on all parties, so  
3 it should be “and other persons.””  
4

5 *Staff analysis:* Staff agree with the comment and recommend the modification.  
6

- 7 (B) Electronically filing any document with the court. The act of electronic  
8 filing is evidence that the party or other person agrees to accept service  
9 at the electronic service address the party or other person has furnished  
10 to the court under rule 2.256(a)(4). This subparagraph (B) does not  
11 apply to self-represented parties or other self-represented persons;  
12 they must affirmatively consent to electronic service under  
13 subparagraph (A).  
14

15 *Drafter’s Note:* The following comments were received in response to the  
16 proposed amendments to Rule 2.251(b)(1)(B).  
17

- 18 • Litigation by the Numbers. “Rule 2.251(b)(1)(B): The current iteration of  
19 C.C.P. section 1010.6 seems to indicate that the parties can only  
20 expressly consent. If so, this subsection is inconsistent. Again, perhaps  
21 something like: “A party or other person may consent to accept electronic  
22 service as provided in [C.C.P. section 1010.6].””  
23

24 *Staff analysis:* The commenter is correct. AB 976 would eliminate consent by  
25 conduct and the rules would need to be revised to conform to that change. Staff  
26 will update the subcommittee on whether AB 976 is enacted.  
27

- 28 (2) A party or other person that has consented to electronic service under (1) and  
29 has used an electronic filing service provider to serve and file documents in a  
30 case consents to service on that electronic filing service provider as the  
31 designated agent for service for the party or other person in the case, until  
32 such time as the party or other person designates a different agent for service.  
33

34 **(c) Electronic service required by local rule or court order**  
35

- 36 (1) A court may require parties to serve documents electronically in specified  
37 actions by local rule or court order, as provided in Code of Civil Procedure  
38 section 1010.6 and the rules in this chapter.  
39

- 40 (2) A court may require other persons to serve documents electronically in  
41 specified actions by local rule, as provided in Code of Civil Procedure section  
42 1010.6 and the rules in this chapter.  
43

1           (3)(2) Except when personal service is otherwise required by statute or rule, a party  
2           or other person that is required to file documents electronically in an action  
3           must also serve documents and accept service of documents electronically  
4           from all other parties or persons, unless:

5  
6           (A) The court orders otherwise, or

7  
8           (B) The action includes parties or persons that are not required to file or  
9           serve documents electronically, including self-represented parties or  
10           other self-represented persons; those parties or other persons are to be  
11           served by non-electronic methods unless they affirmatively consent to  
12           electronic service.

13  
14           (4)(3) Each party or other person that is required to serve and accept service of  
15           documents electronically must provide all other parties or other persons in the  
16           action with its electronic service address and must promptly notify all other  
17           parties, other persons, and the court of any changes under ~~(f)~~(g).

18  
19           **(d) Additional provisions for electronic service required by court order**

20  
21           (1) If a court has adopted local rules for permissive electronic filing, then the court  
22           may, on the motion of any party or on its own motion, provided that the order  
23           would not cause undue hardship or significant prejudice to any party, order all  
24           parties in any class action, a consolidated action, a group of actions, a  
25           coordinated action, or an action that is complex under rule 3.403 to serve all  
26           documents electronically, except when personal service is required by statute or  
27           rule.

28  
29           (2) A court may combine an order for mandatory electronic service with an order  
30           for mandatory electronic filing as provided in rule 2.253(c).

31  
32           (3) If the court proposes to make any order under (1) on its own motion, the court  
33           must mail notice to any parties that have not consented to receive electronic  
34           service. The court may electronically serve the notice on any party that has  
35           consented to receive electronic service. Any party may serve and file an  
36           opposition within 10 days after notice is mailed, electronically served, or such  
37           later time as the court may specify.

38  
39           (4) If the court has previously ordered parties in a case to electronically serve  
40           documents and a new party is added that the court determines should also be  
41           ordered to do so under (1), the court may follow the notice procedures under (2)  
42           or may order the party to electronically serve documents and in its order state

1            that the new party may object within 10 days after service of the order or by  
2            such later time as the court may specify.

3  
4    **~~(d)~~(e) Maintenance of electronic service lists**

5  
6            A court that permits or requires electronic filing in a case must maintain and make  
7            available electronically to the parties or other persons in the case an electronic  
8            service list that contains the parties' or other persons' current electronic service  
9            addresses, as provided by the parties or other persons that have filed electronically  
10           in the case.

11  
12    *Drafter's Note: The following comments were received in response to the*  
13    *proposed amendments to Rule 2.251(e).*

- 14  
15            • Litigation by the Numbers. "Rule 2.251(e): The first insertion of "or other  
16            persons" is incorrect; the list must be made available to the parties, so it  
17            should be "and other persons.""

18  
19    *Staff analysis: Staff agree with the comment and recommend the modification.*

20  
21    **~~(e)~~(f) Service by the parties and other persons**

- 22  
23            (1) Notwithstanding ~~(d)~~(e), parties and other persons that have consented to or  
24            are required to serve documents electronically are responsible for electronic  
25            service on all other parties and other persons required to be served in the  
26            case. A party or other person may serve documents electronically directly, by  
27            an agent, or through a designated electronic filing service provider.  
28  
29            (2) A document may not be electronically served on a nonparty unless the  
30            nonparty consents to electronic service or electronic service is otherwise  
31            provided for by law or court order.

32  
33    **~~(f)~~(g) Change of electronic service address**

- 34  
35            (1) A party or other person whose electronic service address changes while the  
36            action or proceeding is pending must promptly file a notice of change of  
37            address electronically with the court and must serve this notice electronically  
38            on all other parties and all other persons required to be served.  
39  
40            (2) A party's or other person's election to contract with an electronic filing  
41            service provider to electronically file and serve documents or to receive  
42            electronic service of documents on the party's or other person's behalf does  
43            not relieve the party or other person of its duties under (1).

- 1  
2 (3) An electronic service address is presumed valid for a party or other person if  
3 the party or other person files electronic documents with the court from that  
4 address and has not filed and served notice that the address is no longer valid.  
5

6 **(g)(h)Reliability and integrity of documents served by electronic notification**

7  
8 A party or other person that serves a document by means of electronic notification  
9 must:

- 10  
11 (1) Ensure that the documents served can be viewed and downloaded using the  
12 hyperlink provided;  
13  
14 (2) Preserve the document served without any change, alteration, or modification  
15 from the time the document is posted until the time the hyperlink is  
16 terminated; and  
17  
18 (3) Maintain the hyperlink until either:  
19  
20 (A) All parties in the case have settled or the case has ended and the time  
21 for appeals has expired; or  
22  
23 (B) If the party or other person is no longer in the case, the party or other  
24 person has provided notice to all other parties and other persons  
25 required to receive notice that it is no longer in the case and that they  
26 have 60 days to download any documents, and 60 days have passed  
27 after the notice was given.  
28

29 **(h)(i) When service is complete**

- 30  
31 (1) Electronic service of a document is complete ~~at the time of the electronic~~  
32 ~~transmission of the document or at the time that the electronic notification of~~  
33 ~~service of the document is sent.~~ as provided for under Code of Civil  
34 Procedure section 1010.6 and the rules in this chapter.  
35  
36 (2) If an electronic filing service provider is used for service, the service is  
37 complete at the time that the electronic filing service provider electronically  
38 transmits the document or sends electronic notification of service.  
39  
40 ~~(2) If a document is served electronically, any period of notice, or any right or~~  
41 ~~duty to act or respond within a specified period or on a date certain after~~  
42 ~~service of the document, is extended by two court days, unless otherwise~~  
43 ~~provided by a statute or a rule.~~

1  
2 ~~(3) — The extension under (2) does not extend the time for filing;~~

3  
4 ~~(A) — A notice of intent to move for a new trial;~~

5  
6 ~~(B) — A notice of intent to move to vacate the judgment under Code of Civil  
7 Procedure section 663a; or~~

8  
9 ~~(C) — A notice of appeal.~~

10  
11 ~~(4) — Service that occurs after the close of business is deemed to have occurred on  
12 the next court day.~~

13  
14 *Drafter's Note: The following comments were received in response to the  
15 proposed amendments to Rule 2.251(i).*

- 16  
17 • Litigation by the Numbers. “Rule 2.251(i): Insert “deemed” ... “Electronic  
18 service of a document is deemed complete.” That term is included in the  
19 current iteration of the proposed amendment to C.C.P. section 1010.6. In  
20 addition, instead of “as provided for under [C.C.P. section 1010.6] it  
21 should say “as provided in ...” [The revisions variously use: “provided in,”  
22 “provided for under,” and “provided under.”]”

23  
24 *Staff analysis:* Staff agree with the commenter that the revisions should be  
25 consistent in their use of “provided for under/in/under” and recommend the  
26 modification to “as provided in.”

27  
28 Regarding “deemed complete.” The commenter is correct that “deemed  
29 complete” is the language in AB 976 and the rules would more closely track  
30 Code of Civil Procedure section 1010.6 with the addition of “deemed” if AB 976 is  
31 enacted in its current iteration. Staff will update the subcommittee on whether the  
32 bill passes and if there are changes to it.

33  
34 **~~(i)~~(j) Proof of service**

35  
36 (1) Proof of electronic service ~~may be by any of the methods~~ shall be made as  
37 provided in Code of Civil Procedure section 1013b. 1013a, with the  
38 following exceptions:

39  
40 ~~(A) — The proof of electronic service does not need to state that the person  
41 making the service is not a party to the case.~~

42  
43 ~~(B) — The proof of electronic service must state:~~

1  
2 (i) ~~The electronic service address of the person making the service, in~~  
3 ~~addition to that person’s residence or business address;~~  
4

5 (ii) ~~The date of the electronic service, instead of the date and place of~~  
6 ~~deposit in the mail;~~  
7

8 (iii) ~~The name and electronic service address of the person served, in~~  
9 ~~place of that person’s name and address as shown on the~~  
10 ~~envelope; and~~  
11

12 (iv) ~~That the document was served electronically, in place of the~~  
13 ~~statement that the envelope was sealed and deposited in the mail~~  
14 ~~with postage fully prepaid.~~  
15

16 (2) ~~Proof of electronic service may be in electronic form and may be filed~~  
17 ~~electronically with the court.~~  
18

19 (3)(2) ~~Under rule 3.1300(c), proof of electronic service of the moving papers must~~  
20 ~~be filed at least five court days before the hearing.~~  
21

22 (4)(3) ~~The party filing the proof of electronic service must maintain the printed~~  
23 ~~form of the document bearing the declarant’s original signature and must~~  
24 ~~make the document available for inspection and copying on the request of the~~  
25 ~~court or any party to the action or proceeding in which it is filed, in the~~  
26 ~~manner provided in rule 2.257(a). If a person signs a printed form of a proof~~  
27 ~~of electronic service, the party or other person filing the proof of electronic~~  
28 ~~service must comply with the provisions of rule 257(a).~~  
29

30 *Drafter’s Note: The following comments were received in response to the*  
31 *proposed amendments to Rule 2.251(j).*  
32

- 33 • [Litigation by the Numbers](#). “Rule 2.251(j): The reference to rule 257(a)  
34 needs to be changed to 2.257(a).”
- 35 • [OneLegal](#). “Page 14, new (j)(3) “The party filing the proof...”: The added  
36 last sentence is missing the “2.” Should be 2.257(a) not 257(a).”  
37

38  
39 *Staff analysis: These commenters are correct. There is a “2.” missing and this*  
40 *should be corrected.*  
41

42 **(j)(k) Electronic service by or on court**  
43

1 (1) The court may electronically serve documents ~~any notice, order, judgment, or~~  
2 ~~other document issued by the court in the same manner that parties may serve~~  
3 ~~documents by electronic service.~~ as provided for under Code of Civil  
4 Procedure section 1010.6 and the rules in this chapter.  
5

6 (2) A document may be electronically served on a court if the court consents to  
7 electronic service or electronic service is otherwise provided for by law or  
8 court order. A court indicates that it agrees to accept electronic service by:  
9

10 (A) Serving a notice on all parties and other persons in the case that the  
11 court accepts electronic service. The notice must include the electronic  
12 service address at which the court agrees to accept service; or  
13

14 (B) Adopting a local rule stating that the court accepts electronic service.  
15 The rule must indicate where to obtain the electronic service address at  
16 which the court agrees to accept service.  
17

18 *Drafter's Note: The following comments were received in response to the*  
19 *proposed amendments to Rule 2.251(k).*  
20

- 21 • Litigation by the Numbers. "Rule 2.251(k): Instead of "as provided for  
22 under [C.C.P. section 1010.6] it should say "as provided in ..."  
23

24 *Staff analysis: Staff recommend the commenter's modification for the sake of*  
25 *consistency in the rules.*  
26

#### 27 Advisory Committee Comment

28

29 Subdivisions (c)–(d). Court-ordered electronic service is not subject to the provisions in Code of  
30 Civil Procedure section 1010.6 requiring that, where mandatory electronic filing and service are  
31 established by local rule, the court and the parties must have access to more than one electronic  
32 filing service provider.  
33

### 34 **Rule 2.252. General rules on electronic filing of documents**

35

#### 36 **(a) In general**

37

38 A court may provide for electronic filing of documents in actions and proceedings  
39 as provided under Code of Civil Procedure section 1010.6 and the rules in this  
40 chapter.  
41

#### 42 **(b) Direct and indirect electronic filing**

43

1 Except as otherwise provided by law, a court may provide for the electronic filing  
2 of documents directly with the court, indirectly through one or more approved  
3 electronic filing service providers, or through a combination of direct and indirect  
4 means.

5  
6 **(c) ~~Effect of document filed electronically~~ No effect on filing deadline**

7  
8 (1)—~~A document that the court or a party files electronically under the rules in this~~  
9 ~~chapter has the same legal effect as a document in paper form.~~

10  
11 (2)—Filing a document electronically does not alter any filing deadline.

12  
13 **(d) Filing in paper form**

14  
15 When it is not feasible for a party or other person to convert a document to  
16 electronic form by scanning, imaging, or another means, a court may allow that  
17 party or other person to file the document in paper form.

18  
19 **(e) Original documents**

20  
21 In a proceeding that requires the filing of an original document, an electronic filer  
22 may file an electronic copy of a document if the original document is then filed  
23 with the court within 10 calendar days.

24  
25 *Drafter's Note: The following comments were received in response to the*  
26 *proposed amendments to Rule 2.252(e).*

- 27  
28 • [OneLegal](#). "Page 16, (3) Original documents: Many "eFiling courts" have  
29 specifically listed documents which cannot be eFiled, including Wills.  
30 Since a Will is, or can be, an original document, perhaps some clarifying  
31 language is needed as this section conflicts with what those courts are  
32 doing."

33  
34 *Staff analysis: This comment is outside the scope of the changes in this*  
35 *proposal, but staff will add it to a report about public suggestions for future*  
36 *consideration by the subcommittee.*

37  
38 **(f) Application for waiver of court fees and costs**

39  
40 The court ~~may~~ must permit electronic filing of an application for waiver of court  
41 fees and costs in any proceeding in which the court accepts electronic filings.

1 (g) **Orders and judgments**

2  
3 The court may electronically file any notice, order, minute order, judgment, or  
4 other document prepared by the court.  
5

6 (h) **Proposed orders**

7  
8 Proposed orders may be filed and submitted electronically as provided in rule  
9 3.1312.  
10

11 **Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic**  
12 **filing by court order**

13  
14 (a) **Permissive electronic filing by local rule**

15  
16 A court may permit parties by local rule to file documents electronically in any  
17 types of cases, ~~directly or through approved electronic service providers~~, subject to  
18 the conditions in Code of Civil Procedure section 1010.6 and the rules in this  
19 chapter.  
20

21 (b) **Mandatory electronic filing by local rule**

22  
23 A court may require parties by local rule to electronically file documents in civil  
24 actions directly with the court, or directly with the court and through one or more  
25 approved electronic filing service providers, or through more than one approved  
26 electronic filing service provider, subject to the conditions in Code of Civil  
27 Procedure section 1010.6, the rules in this chapter, and the following conditions:  
28

29 (1) The court must specify the types or categories of civil actions in which  
30 parties or other persons are required to file and serve documents  
31 electronically. The court may designate any of the following as eligible for  
32 mandatory electronic filing and service:  
33

34 (A) All civil cases;

35  
36 (B) All civil cases of a specific category, such as unlimited or limited civil  
37 cases;

38  
39 (C) All civil cases of a specific case type, including but not limited to,  
40 contract, collections, personal injury, or employment;

41  
42 (D) All civil cases assigned to a judge for all purposes;  
43

- 1 (E) All civil cases assigned to a specific department, courtroom or  
2 courthouse;
- 3
- 4 (F) Any class actions, consolidated actions, or group of actions,  
5 coordinated actions, or actions that are complex under rule 3.403; or  
6
- 7 (G) Any combination of the cases described in subparagraphs (A) to (F),  
8 inclusive.  
9

10 *Drafter's Note: The following comments were received in response to the*  
11 *proposed amendments to Rule 2.253(b)(1).*

- 12
- 13 • OneLegal. "Page 17, 2.253(b)(1): While no changes were made to this  
14 rule it made us realize there may be an issue with some eFiling courts that  
15 are mandating case types OTHER than Civil (e.g. Family, Probate). I don't  
16 believe the definition of "Civil" includes these case types and I suggest  
17 adding more specific language while the "hood is open." Here are a couple  
18 of reasons why we don't think the definition of Civil includes such case  
19 types as Family and Probate:  
20
  - 21 a. CRC 2.300(a) (A section of the Filing and Service by Fax rules) reads  
22 in part (emphasis added): The rules in this chapter apply to **civil,**  
23 **probate, and family** law proceedings in all trial courts.  
24
  - 25 b. CCP section 308 defines parties in a **civil action** as **plaintiff** and  
26 **defendant**.  
27

28 *Staff analysis:* The comment is outside the scope of the changes in the rules  
29 proposal. However, staff will address the concern. Under rule 1.6(3), "Civil case'  
30 means a case prosecuted by one party against another for the declaration,  
31 enforcement, or protection of a right or the redress or prevention of a wrong. Civil  
32 cases include all cases except criminal cases and petitions for habeas corpus."  
33 Accordingly, it is broadly inclusive of many civil case types. A "general civil case"  
34 has a more narrow definition and excludes various case types including family  
35 and probate cited as examples in the comment. (Cal. Rules of Court, rule 1.6(4).)  
36

- 37 (2) Self-represented parties or other self-represented persons are exempt from  
38 any mandatory electronic filing and service requirements adopted by courts  
39 under this rule and Code of Civil Procedure section 1010.6.  
40
- 41 (3) In civil cases involving both represented and self-represented parties or other  
42 persons, represented parties or other persons may be required to file and serve  
43 documents electronically; however, in these cases, each self-represented

1 party or other person is to file, serve, and be served with documents by non-  
2 electronic means unless the self-represented party or other person  
3 affirmatively agrees otherwise.  
4

5 (4) A party or other person that is required to file and serve documents  
6 electronically must be excused from the requirements if the party or other  
7 person shows undue hardship or significant prejudice. A court requiring the  
8 electronic filing and service of documents must have a process for parties or  
9 other persons, including represented parties or other represented persons, to  
10 apply for relief and a procedure for parties or other persons excused from  
11 filing documents electronically to file them by conventional means.  
12

13 (5) Any fees charged by the court or an electronic filing service provider shall be  
14 consistent with the fee provisions of Code of Civil Procedure section 1010.6.  
15 for no more than the cost actually incurred by the court in providing for the  
16 electronic filing and service of the documents. Any fees charged by an  
17 electronic filing service provider shall be reasonable.  
18

19 ~~(6) Any fees for electronic filing charged by the court or by an electronic filing~~  
20 ~~service provider must be waived when deemed appropriate by the court,~~  
21 ~~including providing a waiver of the fees for any party that has received a fee~~  
22 ~~waiver.~~  
23

24 ~~(7)(6) Any document required to be electronically filed with the court under this~~  
25 ~~subdivision that is received electronically after the close of business on any~~  
26 ~~day is deemed to have been filed on the next court day, unless by local rule~~  
27 ~~the court provides that any document required to be electronically filed with~~  
28 ~~the court under this subdivision that is received electronically before~~  
29 ~~midnight on a court day is deemed to have been filed on that court day, and~~  
30 ~~any document received electronically after midnight is deemed filed on the~~  
31 ~~next court day. The effective date of filing any document received~~  
32 electronically is prescribed by Code of Civil Procedure section 1010.6. This  
33 paragraph provision concerns only the effective date of filing. Any document  
34 that is received electronically must be processed and satisfy all other legal  
35 filing requirements to be filed as an official court record.  
36

37 ~~(8)(7)~~ A court that adopts a mandatory electronic filing program under this  
38 subdivision must report semiannually to the Judicial Council on the operation  
39 and effectiveness of the court's program.  
40

1 (c) **Electronic filing and ~~service required by court order~~**

2  
3 (1) If a court has adopted local rules for permissive electronic filing, then ~~The the~~  
4 court may, on the motion of any party or on its own motion, provided that the  
5 order would not cause undue hardship or significant prejudice to any party,  
6 order all parties in any class action, a consolidated action, a group of actions,  
7 a coordinated action, or an action that is complex under rule 3.403 to:

8  
9 ~~(A) Serve all documents electronically, except when personal service is~~  
10 ~~required by statute or rule;~~

11  
12 ~~(B) File~~ file all documents electronically; ~~or~~

13  
14 ~~(C) Serve and file all documents electronically, except when personal~~  
15 ~~service is required by statute or rule.~~

16  
17 (2) A court may combine an order for mandatory electronic filing with an order for  
18 mandatory electronic service as provided in rule 2.252(d).

19  
20 ~~(3)~~(2) If the court proposes to make any order under (1) on its own motion, the  
21 court must mail notice to ~~the~~ any parties that have not consented to receive  
22 electronic service. The court may electronically serve the notice on any party  
23 that has consented to receive electronic service. Any party may serve and file  
24 an opposition within 10 days after notice is mailed, electronically served, or  
25 such later time as the court may specify.

26  
27 ~~(4)~~(3) If the court has previously ordered parties in a case to electronically ~~serve or~~  
28 file documents and a new party is added that the court determines should also  
29 be ordered to do so under (1), the court may follow the notice procedures  
30 under (2) or may order the party to electronically ~~serve or~~ file documents and  
31 in its order state that the new party may object within 10 days after service of  
32 the order or by such later time as the court may specify.

33  
34 ~~(5)~~(4) The court's order may also provide that:

35  
36 (A) Documents previously filed in paper form may be resubmitted in  
37 electronic form; and

38  
39 (B) When the court sends confirmation of filing to all parties, receipt of the  
40 confirmation constitutes service of the filing if the filed document is  
41 available electronically.

42  
43 **Advisory Committee Comment**

1  
2 **Subdivision (b)(1).** This subdivision allows courts to institute mandatory electronic filing and  
3 service in any type of civil case for which the court determines that mandatory electronic filing is  
4 appropriate. The scope of this authorization is meant to be broad. It will enable courts to  
5 implement mandatory electronic filing in a flexible yet expansive manner. However, in initiating  
6 mandatory electronic filing, courts should take into account the fact that some civil case types  
7 may be easier and more cost-effective to implement at the outset while other types may require  
8 special procedures or other considerations (such as the need to preserve the confidentiality of  
9 filed records) that may make them less appropriate for inclusion in initial mandatory e-filing  
10 efforts.

11  
12 **Subdivision (b)(2).** Although this rule exempts self-represented parties from any mandatory  
13 electronic filing and service requirements, these parties are encouraged to participate voluntarily  
14 in electronic filing and service. To the extent feasible, courts and other entities should assist self-  
15 represented parties to electronically file and serve documents.

16  
17 **Subdivision (c).** Court-ordered electronic filing ~~and service~~ under this subdivision ~~are~~is not  
18 subject to the provisions in (b) and Code of Civil Procedure section 1010.6 requiring that, where  
19 mandatory electronic filing and service are established by local rule, the court and the parties  
20 must have access to more than one electronic filing service provider.

## 21 22 **Rule 2.254. Responsibilities of court**

### 23 24 **(a) Publication of electronic filing requirements**

25  
26 Each court that permits or mandates electronic filing must publish, in both  
27 electronic and print formats, the court's electronic filing requirements.

### 28 29 **(b) Problems with electronic filing**

30  
31 If the court is aware of a problem that impedes or precludes electronic filing ~~during~~  
32 ~~the court's regular filing hours~~, it must promptly take reasonable steps to provide  
33 notice of the problem.

### 34 35 **(c) Public access to electronically filed documents**

36  
37 Except as provided in rules 2.250–2.259 and 2.500–2.506, an electronically filed  
38 document is a public document at the time it is filed unless it is sealed under rule  
39 2.551(b) or made confidential by law.

## 40 41 **Rule 2.255. Contracts with electronic filing service providers**

1 **(a) Right to contract**

- 2
- 3 (1) A court may contract with one or more electronic filing service providers to
- 4 furnish and maintain an electronic filing system for the court.
- 5
- 6 (2) If the court contracts with an electronic filing service provider, it may require
- 7 electronic filers to transmit the documents to the provider.
- 8
- 9 (3) If the court contracts with an electronic service provider or the court has an
- 10 in-house system, the provider or system must accept filing from other
- 11 electronic filing service providers to the extent the provider or system is
- 12 compatible with them.
- 13

14 **(b) Provisions of contract**

15

16 ~~The court's contract with an electronic filing service provider may allow the~~

17 ~~provider to charge electronic filers a reasonable fee in addition to the court's filing~~

18 ~~fee. The contract may also allow the electronic filing service provider to make other~~

19 ~~reasonable requirements for use of the electronic filing system.~~

20

- 21 (1) The court's contract with an electronic filing service provider may:
- 22
- 23 (a) Allow the provider to charge electronic filers a reasonable fee in addition to
- 24 the court's filing fee;
- 25
- 26 (b) Allow the provider to make other reasonable requirements for use of the
- 27 electronic filing system.
- 28
- 29 (2) The court's contract with an electronic filing service provider must comply with
- 30 requirements of Code of Civil Procedure section 1010.6.
- 31

32 **(c) Transmission of filing to court**

33

34 An electronic filing service provider must promptly transmit any electronic filing

35 and any applicable filing fee to the court.

36

37 **(d) Confirmation of receipt and filing of document**

- 38
- 39 (1) An electronic filing service provider must promptly send to an electronic filer
- 40 its confirmation of the receipt of any document that the filer has transmitted
- 41 to the provider for filing with the court.
- 42

1 (2) The electronic filing service provider must send its confirmation to the filer's  
2 electronic service address and must indicate the date and time of receipt, in  
3 accordance with rule 2.259(a).  
4

5 (3) After reviewing the documents, the court must promptly transmit to the  
6 electronic filing service provider and the electronic filer the court's  
7 confirmation of filing or notice of rejection of filing, in accordance with rule  
8 2.259.  
9

10 **(e) Ownership of information**

11 All contracts between the court and electronic filing service providers must  
12 acknowledge that the court is the owner of the contents of the filing system and has  
13 the exclusive right to control the system's use.  
14

15  
16 **Rule 2.256. Responsibilities of electronic filer**

17  
18 **(a) Conditions of filing**

19 Each electronic filer must:

- 20  
21  
22 (1) Comply with any court requirements designed to ensure the integrity of  
23 electronic filing and to protect sensitive personal information;  
24  
25 (2) Furnish information the court requires for case processing;  
26  
27 (3) Take all reasonable steps to ensure that the filing does not contain computer  
28 code, including viruses, that might be harmful to the court's electronic filing  
29 system and to other users of that system;  
30  
31 (4) Furnish one or more electronic service addresses, in the manner specified by  
32 the court, ~~at which the electronic filer agrees to accept service.~~ This only  
33 applies when the electronic filer has consented to or is required to accept  
34 electronic service;  
35  
36 (5) Immediately provide the court and all parties with any change to the  
37 electronic filer's electronic service address. This only applies when the  
38 electronic filer has consented to or is required to accept electronic service;  
39 and  
40  
41 (6) If the electronic filer uses an electronic filing service provider, provide the  
42 electronic filing service provider with the electronic address at which the filer

1 is to be sent all documents and immediately notify the electronic filing  
2 service provider of any change in that address.

3  
4 **(b) Format of documents to be filed electronically**

5  
6 A document that is filed electronically with the court must be in a format specified  
7 by the court unless it cannot be created in that format. The format adopted by a  
8 court must meet the following requirements:

- 9  
10 (1) The software for creating and reading documents must be in the public  
11 domain or generally available at a reasonable cost.  
12  
13 (2) The printing of documents must not result in the loss of document text,  
14 format, or appearance.  
15  
16 (3) The document must be text searchable when technologically feasible without  
17 impairment of the document's image.  
18

19 If a document is filed electronically under the rules in this chapter and cannot be  
20 formatted to be consistent with a formatting rule elsewhere in the California Rules  
21 of Court, the rules in this chapter prevail.  
22

23 **Advisory Committee Comment**

24  
25 **Subdivision (b)(3).** The term “technologically feasible” does not require more than the  
26 application of standard, commercially available optical character recognition (OCR) software.  
27

28 **Rule 2.257. Requirements for signatures on documents**

29  
30 **(a) Documents signed under penalty of perjury**

31  
32 When a document to be filed electronically provides for a signature under penalty  
33 of perjury, of any person, the following applies the document is deemed to have  
34 been signed by that person if filed electronically provided that either of the  
35 following conditions is satisfied:

- 36  
37 (1) The declarant has signed the document using a computer or other technology  
38 in accordance with procedures, standards, and guidelines established by the  
39 Judicial Council; or  
40

41 *Drafter's Note: The following comments were received in response to the*  
42 *proposed amendments to Rule 2.257(a)(1).*  
43

- [OneLegal](#). “. Page 23, 2.257(a)(1) Documents signed under penalty of perjury: The additional language allowing for “either 1 or 2” is a great improvement because it will allow filers to submit documents without first scanning them. We also like the addition of electronic signatures as that language will ameliorate confusion and lessen rejections of submitted eFilings for those filers who choose to “e-Sign” their documents. A great step in the right direction!”

*Staff analysis: No analysis needed.*

~~(1)(2)~~ The declarant ~~The document is deemed signed by the declarant if, before filing, the declarant has physically signed a printed form of the document. (2)~~ By electronically filing the document, the electronic filer certifies ~~that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party. Local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the original, signed pleading in the statewide automated child support system, it may destroy the paper original. In the event this second method of~~ submitting documents electronically under penalty of perjury is used, the following conditions apply:

~~(A)(3)~~ At any time after the electronic version of the document is filed, any ~~other~~ party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.

~~(B)(4)~~ Within five days of service of the demand under ~~(3)(A)~~, the party or other person on whom the demand is made must make the original signed document available for inspection and copying by all other parties.

~~(C)(5)~~ At any time after the electronic version of the document is filed, the court may order the filing party or other person to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

~~(D)~~ Notwithstanding (A)–(C), local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must

1 maintain them only for the period of time stated in Government  
2 Code section 68152(a). If the local child support agency  
3 maintains an electronic copy of the original, signed pleading in  
4 the statewide automated child support system, it may destroy the  
5 paper original.  
6

7 **(b) Documents not signed under penalty of perjury**  
8

9 If a document does not require a signature under penalty of perjury, the document  
10 is deemed signed by the party if the document is filed electronically.  
11

12 **(c) Documents requiring signatures of opposing parties**  
13

14 When a document to be filed electronically, such as a stipulation, requires the  
15 signatures of opposing parties, the following procedure applies:  
16

- 17 (1) The party filing the document must obtain the signatures of all parties on a  
18 printed form of the document.  
19
- 20 (2) The party filing the document must maintain the original, signed document  
21 and must make it available for inspection and copying as provided in (a)(2) of  
22 this rule and Code of Civil Procedure section 1010.6. The court and any other  
23 party may demand production of the original signed document in the manner  
24 provided in (a)(3)–(5)(2)(A)–(C).  
25
- 26 (3) By electronically filing the document, the electronic filer indicates that all  
27 parties have signed the document and that the filer has the signed original in  
28 his or her possession.  
29

30 **(d) Digital signature**  
31

32 A party is not required to use a digital signature on an electronically filed  
33 document.  
34

35 **(e) Judicial signatures**  
36

37 If a document requires a signature by a court or a judicial officer, the document  
38 may be electronically signed in any manner permitted by law.  
39

40 **Advisory Committee Comment**  
41

1 **Subdivision (a)(1).** The standards and guidelines for electronic signatures that satisfy the  
2 requirements for an electronic signature under penalty of perjury are [will be] contained in the  
3 Trial Court Records Manual.  
4

5 **Rule 2.259. Actions by court on receipt of electronic filing**  
6

7 **(a) Confirmation of receipt and filing of document**  
8

9 (1) *Confirmation of receipt*  
10

11 When a court receives an electronically submitted document, the court must  
12 promptly send the electronic filer confirmation of the court's receipt of the  
13 document, indicating the date and time of receipt. A document is considered  
14 received at the date and time the confirmation of receipt is created.  
15

16 (2) *Confirmation of filing*  
17

18 If the document received by the court under (1) complies with filing  
19 requirements and all required filing fees have been paid, the court must  
20 promptly send the electronic filer confirmation that the document has been  
21 filed. The filing confirmation must indicate the date and time of filing and is  
22 proof that the document was filed on the date and at the time specified. The  
23 filing confirmation must also specify:  
24

25 (A) Any transaction number associated with the filing;

26 (B) The titles of the documents as filed by the court; and

27 (C) The fees assessed for the filing.  
28

29 (3) *Transmission of confirmations*  
30

31 The court must send receipt and filing confirmation to the electronic filer at  
32 the electronic service address the filer furnished to the court under rule  
33 2.256(a)(4). The court must maintain a record of all receipt and filing  
34 confirmations.  
35

36 (4) *Filer responsible for verification*  
37

38 In the absence of the court's confirmation of receipt and filing, there is no  
39 presumption that the court received and filed the document. The electronic  
40 filer is responsible for verifying that the court received and filed any  
41 document that the electronic filer submitted to the court electronically.  
42  
43

1  
2 **(b) Notice of rejection of document for filing**  
3

4 If the clerk does not file a document because it does not comply with applicable  
5 filing requirements or because the required filing fee has not been paid, the court  
6 must promptly send notice of the rejection of the document for filing to the  
7 electronic filer. The notice must state the reasons that the document was rejected  
8 for filing.  
9

10 ~~(e)~~ **Document received after close of business**  
11

12 ~~A document that is received electronically by the court after the close of business is~~  
13 ~~deemed to have been received on the next court day, unless the court has provided~~  
14 ~~by local rule, with respect to documents filed under the mandatory electronic filing~~  
15 ~~provisions in rule 2.253(b)(7), that documents received electronically before~~  
16 ~~midnight on a court day are deemed to have been filed on that court day, and~~  
17 ~~documents received electronically after midnight are deemed filed on the next court~~  
18 ~~day. This provision concerns only the effective date of filing; any document that is~~  
19 ~~electronically filed must be processed and satisfy all other legal filing requirements~~  
20 ~~to be filed as an official court record.~~  
21

22 ~~(c)(d)~~ **Delayed delivery**  
23

24 If a technical problem with a court's electronic filing system prevents the court  
25 from accepting an electronic filing ~~during its regular filing hours~~ on a particular  
26 court day, and the electronic filer demonstrates that he or she attempted to  
27 electronically file the document on that day, the court must deem the document as  
28 filed on that day. This subdivision does not apply to the filing of a complaint or any  
29 other initial pleading in an action or proceeding.  
30

31 ~~(d)(e)~~ **Endorsement**  
32

- 33 (1) The court's endorsement of a document electronically filed must contain the  
34 following: "Electronically filed by Superior Court of California, County of  
35 \_\_\_\_\_, on \_\_\_\_\_ (date)," followed by the name of the court clerk.  
36
- 37 (2) The endorsement required under (1) has the same force and effect as a  
38 manually affixed endorsement stamp with the signature and initials of the  
39 court clerk.  
40
- 41 (3) A complaint or another initial pleading in an action or proceeding that is filed  
42 and endorsed electronically may be printed and served on the defendant or  
43 respondent in the same manner as if it had been filed in paper form.

1  
2 **(e)(f) Issuance of electronic summons**  
3

- 4 (1) On the electronic filing of a complaint, a petition, or another document that  
5 must be served with a summons, the court may transmit a summons  
6 electronically to the electronic filer in accordance with this subdivision and  
7 Code of Civil Procedure section 1010.6.  
8  
9 (2) The electronically transmitted summons must contain an image of the court’s  
10 seal and the assigned case number.  
11  
12 (3) Personal service of the printed form of a summons transmitted electronically  
13 to the electronic filer has the same legal effect as personal service of a copy  
14 of an original summons.  
15

16 *Drafter’s Note: The following comments were received as overarching or*  
17 *additional comments to the proposal. Each comment is on a different topic and*  
18 *has a separate staff analysis.*  
19

- 20 • Orange County Bar Association. “OCBA’S only concern with this proposal  
21 is that it pre-supposes an effective date of Jan 1, 2018 for the Judicial  
22 Council legislation amending C.C.P. §1010.6 and enacting a new C.C.P.  
23 §1013b, which legislation is necessary for some but not all of these  
24 proposed rule changes. The timing for adoption of these Rule changes  
25 must be specifically coordinated with the legislation enactment or else  
26 many changes herein will have to be delayed or removed.”  
27

28 *Staff analysis:* Staff agree with the comment and recommend that the  
29 subcommittee wait on the outcome of the enactment of AB 976 before making a  
30 recommendation to ITAC and the Civil and Small Claims Advisory Committee.  
31

- 32 • State Bar of California Standing Committee on the Delivery of Legal  
33 Services. “With respect to the “reasonable requirements” to access the  
34 electronic filing system, it would greatly benefit low income clients to  
35 explicitly state that Electronic Filing Services Providers (EFSPs) cannot  
36 require indigents to have either a credit card, debit card, or bank account  
37 to utilize the EFSPs’ services. In the past, some EFSPs have required a  
38 credit card to create an account, even if that credit card was never billed,  
39 and that creates an insurmountable barrier to those without access to  
40 credit or banking services.  
41

42 Additionally, EFSPs should have to comply with accessibility requirements  
43 under the Americans with Disabilities Act, which is another way they

1 cannot require users not use, for example, a screen reader to use the site  
2 in a reasonable manner.”

3

4 *Staff analysis:* These suggestions are outside the scope of the changes  
5 presented in this proposal, but staff will add them to a report about public  
6 suggestions for future consideration by the subcommittee.

7

8

DRAFT

**SPR17-25****Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Litigation By The Numbers By Julie Goren, Author/Publisher 13351 Cumpston St. Sherman Oaks, California 91401 Telephone: 818-787-9799 Email: <a href="mailto:julie@litigationbythenumbers.com">julie@litigationbythenumbers.com</a>	AM	<p>With regard to the specific comments requested, I agree with the third option: retain the terms but refer to 1010.6.</p> <p>Other comments are as follows:</p> <ol style="list-style-type: none"> <li>1. Rule 2.250(b)(1): I realize this language has been around for years, and is likely beyond the scope of the Invitation, but I am just now noticing it. Why is there a need to provide a specific definition of “document” for this chapter? The term is used in 157 different C.C.P. sections (including 1010.6) and has never before required definition. I suggest deleting it entirely. Alternatively, it should be revised. The phrase “or another filing submitted,” can easily be interpreted to mean that the term refers only to filed documents, i.e., not written discovery demands or responses. It would follow, then, that Rule 2.250(b)(2)’s definition of electronic service refers only to filed documents. This is obviously not the intent nor the practice.</li> <li>2. Rule 2.250(b)(8): Is the insertion of “or persons” supposed to be “or other persons”?</li> <li>3. Rule 2.251(a): We unfortunately won’t know how C.C.P. section 1010.6 will read until AB 976 is passed. The</li> </ol>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

**SPR17-25**

**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>iteration drafted on 4/20/17 seems inconsistent with Rule 2.251(a). The amendment states: “(2) (A) If a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has expressly consented on the appropriate Judicial Council form to receive electronic delivery in that specific action or the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d). (B) If a document is required to be served by certified or registered mail, electronic service of the document is not authorized.” I suggest that, in order not to be inconsistent with whatever C.C.P. section 1010.6 ultimately says, Rule 2.251(a) be amended to something like: “A document may be served electronically where authorized by [C.C.P. section 1010.6].”</p> <p>4. Rule 2.251(b)(1): The first sentence should be deleted. I don’t believe that “established” has any meaning here. Electronic service is agreed to, authorized, effected ...what is “established” supposed to mean?</p> <p>5. Rule 2.251(b)(1)(A): The first insertion of “or other persons” is incorrect; service of the notice must be on all parties, so it should be “and other persons.”</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

**SPR17-25**

**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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

	Commentator	Position	Comment	Committee Response
			<p>6. Rule 2.251(b)(1)(B): The current iteration of C.C.P. section 1010.6 seems to indicate that the parties can only expressly consent. If so, this subsection is inconsistent. Again, perhaps something like: “A party or other person may consent to accept electronic service as provided in [C.C.P. section 1010.6].”</p> <p>7. Rule 2.251(e): The first insertion of “or other persons” is incorrect; the list must be made available to the parties, so it should be “and other persons.”</p> <p>8. Rule 2.251(i): Insert “deemed” ... “Electronic service of a document is deemed complete.” That term is included in the current iteration of the proposed amendment to C.C.P. section 1010.6. In addition, instead of “as provided for under [C.C.P. section 1010.6] it should say “as provided in ...” [The revisions variously use: “provided in,” “provided for under,” and “provided under.”]</p> <p>9. Rule 2.251(j): The reference to rule 257(a) needs to be changed to 2.257(a).</p> <p>10. Rule 2.251(k): Instead of “as provided for under [C.C.P. section 1010.6] it should say “as provided in ...”</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

**SPR17-25**

**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
2.	One Legal, LLC. By Mark L. Schwartz, Court Integration Manager 504 Redwood Blvd. #223 Novato, CA 94947 <a href="mailto:mschwartz@onelegal.com">mschwartz@onelegal.com</a> Tel. 415-475-6254	NI	<p>1. Page 7, Request for Specific Comments: We like the 3rd bullet point option “Retain the terms, but refer back to section 1010.6...” While eService is not a new concept to us, it is to many law firms and so to define it is helpful. Our eService trainings touch on the rule and statute for that reason which is why we think eliminating these definitions entirely would be a bad idea. Keeping it in both the rule and the statute, however, <i>is</i> unnecessary.</p> <p>2. Page 8, (b)(1) “document”: This current definition of a document (...or another filing), including the additional language, could be construed as meaning a document that IS NOT a filing, notice, order, judgment or other issuance, cannot be eServed since (b)(2) below defines eService as “service of a document.” Interrogatories and Notices of Deposition are two (2) examples of documents that do not fall within the definition of a document as described in section (b)(1).</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

**SPR17-25**

**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>3. Page 9, (b)(9) and (b)(10) “Regular filing hours and Close of business”: We completely agree with removing these two sub-sections. They were confusing, especially since many courts have different hours on different days.</p> <p>4. Page 14, <i>new</i> (j)(3) “The party filing the proof...”: The added last sentence is missing the “2.” Should be 2.257(a) not 257(a).</p> <p>5. Page 16, (3) Original documents: Many “eFiling courts” have specifically listed documents which cannot be eFiled, including Wills. Since a Will is, or can be, an original document, perhaps some clarifying language is needed as this section conflicts with what those courts are doing.</p> <p>6. Page 17, 2.253(b)(1): While no changes were made to this rule it made us realize there may be an issue with some eFiling courts that are mandating case types OTHER than Civil (e.g. Family, Probate). I don’t believe the definition of “Civil”</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

**SPR17-25**

**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>includes these case types and I suggest adding more specific language while the “hood is open.” Here are a couple of reasons why we don’t think the definition of Civil includes such case types as Family and Probate:</p> <p>a. CRC 2.300(a) (A section of the Filing and Service by Fax rules) reads in part (emphasis added): The rules in this chapter apply to <i>civil, probate, and family law</i> proceedings in all trial courts.</p> <p>b. CCP section 308 defines parties in a <i>civil action</i> as <i>plaintiff</i> and <i>defendant</i>.</p> <p>7. Page 23, 2.257(a)(1) Documents signed under penalty of perjury: The additional language allowing for “either 1 or 2” is a great improvement because it will allow filers to submit documents without first scanning them. We also like the addition of electronic signatures as that language will ameliorate confusion and lessen rejections of submitted eFilings for those filers who choose to “e-Sign” their documents. A great step in the right direction!</p>	

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**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
3.	Orange County Bar Association By Michael L. Baroni, President P.O. Box 6130 Newport Beach, CA 92658	A	<p>OCBA’S only concern with this proposal is that it pre-supposes an effective date of Jan 1, 2018 for the Judicial Council legislation amending C.C.P. §1010.6 and enacting a new C.C.P. §1013b, which legislation is necessary for some but not all of these proposed rule changes. The timing for adoption of these Rule changes must be specifically coordinated with the legislation enactment or else many changes herein will have to be delayed or removed.</p> <p>The OCBA is confused by the request for specific comments: Some members believe that the request seeks clarification as to whether all definitions contained in Rule 2.250(b) should be retained while other members believe the request only seeks advice on keeping the three statutory definitions in one form or another. With regard to the request for specific comments, the OCBA believes that it would be preferable for ease of administration to retain each of the terms, but refer back to section 1010.6 for the statutory definitions and also preferable to retain the additional</p>	

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**SPR17-25**

**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			non-statutory definitions at (1),(5),(6),(7), and (8) as within the Council’s authority and helpful to the Court, parties, and other persons.	
4.	State Bar of California Standing Committee on the Delivery of Legal Services By Sharon Djemal, Chair 180 Howard Street San Francisco, California 94105 Tel: 415-538-2267 Fax: 415-538-2552	A	<b>Specific Comments</b> <ul style="list-style-type: none"><li>• Section 1010.6 and rule 2.250(b) contain definitions of “electronic service,” “electronic transmission,” and “electronic notification.” The rule 2.250(b) definitions mirror the section 1010.6 definitions, but the rule provides a more comprehensive scheme of definitions than does section 1010.6. The advisory committee retained the duplicative definitions to preserve this comprehensive scheme.</li></ul> <p>With respect to the definitions of “electronic service,” “electronic transmission,” and “electronic notification” in rule 2.250(b), the advisory committee seeks comments on whether it should:</p> <ul style="list-style-type: none"><li>▪ Continue to include the terms and their definitions in the rules;</li></ul>	

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**SPR17-25**

**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<ul style="list-style-type: none"> <li>▪ Eliminate the terms and their definitions;</li> <li>▪ Retain the terms, but refer back to section 1010.6 for the definitions (e.g., “Electronic service” has the same meaning as defined in Code of Civil Procedure section 1010.6”); or</li> <li>▪ Modify the definitions in some other way.</li> </ul> <p>It is better to retain the duplicative terms and their definitions in the rule so that practitioners and especially self-represented litigants have the full comprehensive scheme without having to refer back to section 1010.6.</p> <p><b>Additional Comments</b></p> <p>With respect to the “reasonable requirements” to access the electronic filing system, it would greatly benefit low income clients to explicitly state that Electronic Filing Services Providers (EFSPs) cannot require indigents to have either a credit card, debit card, or bank account to utilize the EFSP’s services. In the past, some</p>	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>EFSPs have required a credit card to create an account, even if that credit card was never billed, and that creates an insurmountable barrier to those without access to credit or banking services.</p> <p>Additionally, EFSPs should have to comply with accessibility requirements under the Americans with Disabilities Act, which is another way they cannot require users not use, for example, a screen reader to use the site in a reasonable manner.</p>	
5.	<p>Superior Court of Los Angeles County 111 N. Hill Street Los Angeles, CA 90012</p>	A	No specific comment.	
6.	<p>Superior Court of San Diego County By Mike Roddy, Court Executive Officer County Courthouse 220 West Broadway San Diego, California 92101</p>	AM	<p>The proposal to eliminate references to “close of business” and “regular filing hours” in rule 2.250(b)(9) and (10) appears to provide different levels of access to the courts. A litigant without access to the internet would be limited to the office hours of a legal aid provider or the public library, neither of which are typically open until midnight.</p>	

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**SPR17-25**

**Technology: Rules Modernization Project** (amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			This would also provide different levels of access for counties with permissive e-filing. Those who do not utilize e-filing would be limited to submit filings in a drop-box by 5 p.m. or when the courthouse closes.	

DRAFT

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## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: November 16-17, 2017

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**Title**

Rules Modernization

**Agenda Item Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259

**Effective Date**

January 1, 2018

**Date of Report**

September 22, 2017

**Recommended by**

Information Technology Advisory Committee  
Hon. Sheila F. Hanson, Chair  
Civil and Small Claims Advisory Committee  
Hon. Ann I. Jones, Chair

**Contact**

Andrea L. Jaramillo, (916) 263-0991  
[andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@jud.ca.gov)

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### Executive Summary

As part of the Rules Modernization Project, the Information Technology Advisory Committee (ITAC) and Civil and Small Claims Advisory Committee (CSCAC) recommend amending several rules related to electronic service and electronic filing. The amendments are intended to improve the organization of the rules; improve the rules' consistency with the Code of Civil Procedure, including consistency with recently enacted legislation; and reduce redundancies between the rules and the Code of Civil Procedure.

### Recommendation

ITAC and CSCAC recommend that the Judicial Council, effective January 1, 2018:

1. Amend rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259 to ensure consistency, improve clarity, and reduce redundancy between the rules and the Code of Civil Procedure.

The text of the amended rules and the new and revised forms are attached at pages **X-X (TBD)**.

### **Previous Council Action**

The Judicial Council sponsored legislation this year to amend section 1010.6 and enact section 1013b in the Code of Civil Procedure (hereafter, section 1010.6 and 1013b). The legislation passed the Legislature in Assembly Bill 976 on September 14, 2017. In brief, the legislation:

- Authorizes electronic filing and service by and on persons other than parties,
- Authorizes electronic signatures on electronically filed documents,
- Provides for a consistent effective date of filing across courts and case types,
- Codifies the effective date of electronic service,
- Consolidates mandatory electronic filing provisions,
- Codifies mandatory electronic service provisions,
- Codifies protections for self-represented persons, and
- Codifies procedures governing proof of electronic service.

### **Rationale for Recommendation**

The proposed amendments improve consistency and reduce redundancy between the rules and the Code of Civil Procedure, including ensuring the rules are consistent with statutory changes that will be effective January 1, 2018. The proposed amendments also make limited organizational changes to the rules to improve their logical ordering. The benefits of these changes will be improved clarity in the rules and avoidance of rule language that conflicts with statutory language.

#### **Add provisions related to electronic filing and service by or on a nonparty**

With the enactment of AB 976, section 1010.6 authorizes electronic filing by and electronic service by and on “other persons” rather than just parties. To ensure that the trial court rules are consistent with this change, the proposal amends rules 2.250–2.253 and 2.257 to reference “other persons” in addition to parties.

“Other person” was intentionally not defined in section 1010.6 because comprehensively identifying those who fall in the category of “other person” who may be involved in a case without being a party would be overly complicated and variable. However, in a few instances in the rules, the addition of “other person” without any limiting language may result in an overly broad scope or confusion. Accordingly, ITAC recommends using limiting language to provide clarity. For example, under the proposed amendment to rule 2.251(e), governing maintenance of electronic service lists, a court would need to “maintain and make available electronically to the parties or other persons in the case an electronic service list. . .” (Italics added.) This would ensure that the electronic service list does not need to be made available to all other persons in the world who might request it, but rather is limited to other persons involved in the case. In addition, under the proposed amendment to rule 2.251(f)(1), governing service by parties and other persons, “parties and other persons that have consented to or are required to serve

*documents electronically* are responsible for electronic service on all other parties and other persons required to be served in the case.” (Italics added.) The purpose of the limiting language here is to ensure the scope of responsibility for performing electronic service is not overly broad. Even if an “other person” agreed to electronic service, there is no obligation created by electronic service rules to electronically serve that particular document on the “other person” if that person is not someone required to be served a particular document.

#### **Add provisions for electronic signatures on electronically filed documents.**

With the passage of AB 976, section 1010.6 authorizes the use of electronic signatures on electronically filed documents signed under penalty of perjury. To remain consistent with section 1010.6, the proposal amends rule 2.257, governing requirements for signatures on documents, to include a provision for electronic signatures.

Section 1010.6 leaves the creation of specific procedures, standards, or guidelines under the authority of the Judicial Council. ITAC recommends including an advisory committee comment to explain that the guidelines will be contained in the *Trial Court Records Manual*.

#### **Eliminate references to “close of business” and “regular filing hours” for effective date of electronic filing and service**

Effective January 1, 2018, section 1010.6 will set a consistent effective date of filing and service across courts and case types. Under the amendments enacted in AB 976, documents received electronically by a court between 12:00 a.m. and 11:59:59 p.m. on a court day are deemed filed on that court day. Similarly, documents served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day are deemed served on that court day. To remain consistent with section 1010.6, the proposal eliminates the definition of “close of business” under rule 2.250(b)(10), governing definitions. In addition, the proposal eliminates references to close of business in rule 2.251, which relates to electronic service, and rules 2.253 and 2.259, which relate to electronic filing. Finally, the proposal eliminates the definition of and references to “regular filing hours” found in rules 2.250(b)(9), 2.254(b), and 2.259(d).

#### **Eliminate mandatory electronic filing and service fee provisions that will become redundant**

With the passage of AB 976, section 1010.6 no longer has the provision that authorized a mandatory electronic filing and service pilot project in the Superior Court of Orange County, but rather now has provision authorizing mandatory electronic filing and service by local rule in any court. The fee provisions in rule 2.253(b)(5)–(6) will be duplicative of section 1010.6 and are largely eliminated in favor of a succinct provision that any fees charged by a court or electronic filing service provider shall be consistent with section 1010.6.

#### **Eliminate provisions governing proof of electronic service that will become redundant**

AB 976 added section 1013b to the Code of Civil Procedure to codify proof of electronic service requirements. Because section 1013b will fill the statutory gap that a rule had been filling, the proposal eliminates rule provisions that are duplicative of section 1013b.

### **Clarify that issuances by a court can fall within the definition of “document”**

Section 1010.6(a)(3) allows the court to electronically serve “any document issued by the court.” However, Section 1010.6 does not define “document.” Rather, rule 2.250(b) provides a definition but currently does not include any documents issued by a court within its scope. The proposal adds that a notice, order, judgment, or other issuance by the court is included in the definition of “document.”

### **Reorganize rules on electronic filing and electronic service required by court order**

Section 1010.6(c) authorizes courts to require parties to file and serve documents electronically by court order in certain types of cases. Under the rules, both electronic filing and electronic service required by court order are addressed in rule 2.253(c). However, the heading of rule 2.253, “Permissive electronic filing, mandatory electronic filing, and electronic filing by court order,” indicates that only electronic filing is within its scope. Rule 2.251, “Electronic service,” includes some provisions for electronic service by court order but is not comprehensive, as additional provisions are located in rule 2.253. To resolve this inconsistency and improve clarity, the proposal adds a new subdivision (d) to rule 2.251 concerning electronic service by court order. In addition, the scope of subdivision (c) of rule 2.253 is narrowed to encompass only electronic filing by court order to keep it topically consistent with the rest of the rule.

### **Eliminate rule provisions that are duplicative of section 1010.6**

Owing to the historical development of the rules and section 1010.6 (with the rules sometimes preceding the statutes in addressing electronic filing and electronic service), duplicative provisions exist between the two. The proposal eliminates some rule provisions that duplicate those in section 1010.6. The benefit of eliminating redundant provisions is that the Judicial Council will not need to make rule amendments to replicate changes to section 1010.6. In turn, this will reduce the risk of the rules and section 1010.6 becoming inconsistent with one another.

Specifically, the proposal eliminates provisions for the extension of time associated with electronic service under rule 2.251(h) (relettered (i) under the proposal) as those provisions merely duplicate section 1010.6(a)(4)(A). The proposal also eliminates those provisions in rule 2.252(c)(1) on the legal effect of documents filed electronically that duplicate those in section 1010.6(b)(1).

The proposal does not eliminate the definitions of “electronic service,” “electronic transmission,” and “electronic notification” that are the same as those in section 1010.6. Rule 2.250(b) provides a more comprehensive scheme of definitions than does section 1010.6 and includes terms that are undefined in that section (e.g., the term “document”).

### **Amend fee provisions to be more consistent with section 1010.6**

Rule 2.255 provides for contracting between the courts and electronic filing service providers (EFSPs). Rule 2.255(b) allows permissible provisions of any such contract to include “reasonable fees” charged by an EFSP and “reasonable requirements” imposed by the EFSP for

users to access the electronic filing system. The proposal splits rule 2.255(b) into two subdivisions: (b)(1) contains the same permissive language that existed in the rule previously, and (b)(2) includes a new mandatory provision that the contract must comply with the requirements of section 1010.6. The proposal will help avoid any gaps between what a contract may provide and what it must provide. By statute, any fees an EFSP charges for processing a payment for filing fees and other court fees “shall not exceed the costs incurred for processing the payment.” (§ 1010.6(b)(7).) Existing rule 2.255(b) does not take this specific requirement into account. Retaining the permissive language in the proposal continues to allow “reasonable fees” to be charged and for providers to make “reasonable requirements,” but adding in the mandatory piece places a limit. The mandatory piece refers back to section 1010.6 generally, rather than duplicating specific language such as the new limit on fees for processing a payment in section 1010.6(b)(7). This is to avoid redundancy with existing section 1010.6, and inconsistency with amendments to section 1010.6 that the Legislature may make in the future.

Finally, rule 2.252, which provides general rules for electronic filing, includes permissive language on whether a court permits applications for fee waivers in proceedings in which the court accepts electronic filings. Under rule 2.252(f), a court “may” permit the application to be filed electronically. This is inconsistent with section 1010.6(b)(6), which states, “The court *shall* permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, *as part of the process involving the electronic filing of a document.*” (Italics added.) Accordingly, the proposal amends rule 2.252(f) to reflect section 1010(b)(6)’s requirement that courts to allow the application for fee waiver to be filed electronically in any proceeding in which the court accepts electronic filings.

#### **Clarify responsibilities of electronic filers**

Rule 2.256 governs the responsibilities of electronic filers. Under the existing rules, as a condition of electronic filing, an electronic filer must “[f]urnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service.” (Rule 2.256(a)(4).) The proposal strikes the phrase “at which the electronic filer agrees to accept electronic service” because, by definition, an electronic service address *is* an electronic address through which one has authorized electronic service. (Rule 2.250(b)(5) [defining “electronic service address”].)

In addition, the proposal adds the following limitation to rule 2.256(a)(4): “This only applies when the electronic filer has consented to or is required to accept electronic service.” Under rule 2.251(b)(1)(B), the act of electronically filing a document acts as consent to receive electronic service except with self-represented parties, who must affirmatively consent to receive electronic service. Accordingly, a self-represented party may be an electronic filer but may not have the responsibility to provide an electronic service address because he or she has not affirmatively consented to receive electronic service. Accordingly, the rule amendment is intended to clarify which electronic filers have the responsibility to furnish an electronic service address. Similarly, under rule 2.256(a)(5), an electronic filer must “[i]mmediately provide the court and all parties with any change to the electronic filer’s electronic service address.” The proposal adds that

“[t]his only applies when the electronic filer has consented to or is required to accept electronic service” to clarify the scope of electronic filers that must provide such notice.

### **Alternatives Considered**

With the enactment of AB 976, the committees believe many of the proposed rule changes will be necessary to avoid inconsistency and confusion between the rules and Code of Civil Procedure. Other changes, though not strictly necessary, would improve and clarify the rules. Hence, alternatives to the proposed changes were not considered appropriate.

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

The advisory committees expect that the rule proposal will provide greater clarity in the rules for parties, attorneys, courts, and other court users, and improved consistency between the rules and the Code of Civil Procedure.

### **Attachments and Links**

1. Text of proposed amendments to the California Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259, at pages **AA-BB (TBD)**
2. Chart of comments, at pages **XX-YY (TBD)**
3. AB 976 (Stats. 2017, ch. **TBD**),  
[https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB976](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB976)