

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### LEG19-01

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Title	Action Requested
Judicial Council–Sponsored Legislation: Consistent Fee Provisions with Electronic Filing and Service; Signatures on Electronically Filed Documents Not Signed Under Penalty of Perjury	Review and submit comments by June 7, 2019
Proposed Rules, Forms, Standards, or Statutes Amend Code Civ. Proc., § 1010.6	Proposed Effective Date January 1, 2021
Proposed by Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Contact Andrea L. Jaramillo, 916-263-0991 <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>

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### Executive Summary and Origin

The Information Technology Advisory Committee recommends the Judicial Council sponsor legislation to amend Code of Civil Procedure section 1010.6, which governs electronic filing and service in civil matters. The purpose of the proposal would be twofold: (1) to create consistency in the fee provisions by allowing courts to recover no more than their actual costs regardless of whether electronic filing and service is permitted by local rule, required by court order, or required by local rule; and (2) to account for signatures made not under penalty of perjury by persons other than the filer. The proposal originated with Judicial Council staff.

### Background

#### Cost recovery

Code of Civil Procedure section 1010.6 (§ 1010.6) provides statutory authority for electronic filing and service. The trial courts may adopt local rules permitting or requiring electronic filing subject to certain conditions. (§ 1010.6(b), (d).) A court may also require electronic filing and service by court order in certain types of cases if it has adopted local rules conforming to the statutory conditions for permissive electronic filing. (§ 1010.6(c).) When a court permits electronic filing by local rule, it may charge a fee for payment processing not to exceed the costs of processing a payment. (§ 1010.6(b)(7).) If a court permits electronic filing by local rule, it may also require electronic filing and service by court order, but the provision on ordering

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electronic filing and service does not directly address costs. (§ 1010.6(c).) A court may also require electronic filing and service by local rule, and in that case, it may “charge fees of no more than the actual cost” except in instances where the court deems waiving the fees appropriate. (§ 1010.6(d).) Accordingly, what costs a court can recover vary depending on whether electronic filing and service is permitted by local rule, required by court order, or required by local rule.

### **Documents not signed under penalty of perjury**

Under section 1010.6, “When a document to be filed requires the signature of any person, not under penalty of perjury, the document shall be deemed to have been signed by the person who filed the document electronically.” (§ 1010.6(b)(2)(A).) While this provision initially states that it applies when a signature of *any* person is required, the scope is limited by the language “the document shall be deemed to have been signed *by the person who filed.*” As such, the provision does not account for a situation where someone signs a document not under penalty of perjury, the document is to be filed electronically, and the filer and signer are different people.

### **The Proposal**

The proposal would create consistency in the fee provisions by allowing courts to recover no more than their actual costs regardless of whether electronic filing and service is permitted by local rule, required by court order, or required by local rule. The proposal would add a provision to account for signatures made not under penalty of perjury by persons other than the filer.

### **Cost recovery provisions**

The provisions for electronic filing and service permitted by local rule are found in subdivision (b) of section 1010.6 while the provisions for electronic filing and service required by court order and required by local rule are found in subdivisions (c) and (d), respectively. The proposed amendments would add a new subdivision (b)(8) to allow courts to recover actual costs when electronic filing and service is permitted by local rule. The language of proposed subdivision (b)(8) is taken from existing subdivision (d). Because subdivision (d) is subject to the requirements and conditions of subdivision (b), the proposal removes the existing language from subdivision (d) that would be identical to the new language in proposed subdivision (b)(8).

The proposal also strikes “the court” from the existing language in subdivision (b)(7), which covers recovery of payment processing fees. Because the language in subdivision (b)(8) is broad enough to encompass payment processing fees, it would not be necessary to keep “the court” in subdivision (b)(7). Finally, the proposal adds to subdivision (c) that it is subject to the requirements and conditions of subdivision (b) and subdivision (f), which cover rulemaking for mandatory electronic filing. This is the same as language in existing subdivision (d) and makes subdivisions (c) and (d) more consistent.

### **Document signing provisions**

The proposed amendment would preserve the status quo when the filer is the signer, but also account for documents not signed under penalty of perjury when the filer and signer are different

people. The amendment would leave the specific processes for signatures not under penalty of perjury when the filer and signer are different people to be described in a rule of court just as is the case for documents electronically signed under penalty of perjury.

## **Alternatives Considered**

### **Cost recovery provisions**

The committee considered maintaining the status quo, which would continue different cost recovery provisions depending on whether electronic filing and service is permitted by local rule, required by court order, or required by local rule. The committee considered it preferable to make the cost recovery provisions consistent and allow courts to recover no more than actual costs. This may encourage more courts to offer electronic filing or expand the scope of their offerings. Currently, only about half of the trial courts provide electronic filing and service either directly, through vendor services, or a combination of vendor and in-house services. The committee is seeking specific comments from the courts on this as well as comments on the impact on self-represented or indigent litigants.

### **Document signing provisions**

The committee considered addressing this issue only in the rules of court. However, because section 1010.6 states that it governs the signature of *any person* not under penalty of perjury, but then specifically narrows to only address the filer, amending section 1010.6 would ensure there would be no potential inconsistency between the controlling statute and rules of court.

### **Fiscal and Operational Impacts**

Courts can already recover actual costs when electronic filing and service is *required* by local rule. The main fiscal impacts therefore would be with electronic filing and service *permitted* by local rule. Where courts already permit electronic filing and service by local rule, the proposal may reduce costs for courts because those costs would be recoverable. The proposal may also make it more feasible for the court to expand the scope of electronic filing and service. Where courts already permit electronic filing and service by local rule, there may be an increase in costs to litigants already using permissive electronic filing because costs are currently limited to recovery of payment processing fees. Where courts do not currently permit electronic filing and service, the proposal may make it more feasible for more courts to do so. Because electronic filing and service permitted by local rule is optional, litigants would still have the choice to file in paper. The committee seeks specific comments from the courts and public on fiscal and operational impacts.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- What impact would the proposal have on self-represented litigants and their access to permissive electronic filing and service?

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

- Would the proposal provide cost savings? If so, please quantify.
- If the court does not currently have local rules permitting electronic filing and service, would the proposal make it more feasible for the court to do so?
- If the court currently has local rules permitting electronic filing and service, would the proposal help the court to improve or expand electronic filing and service?

### **Attachments and Links**

1. Code Civ. Proc., § 1010.6, at pages 5–7
2. Link A: Code Civ. Proc., § 1010.6,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6.&lawCode=CCP](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6.&lawCode=CCP)

Section 1010.6 of the Code of Civil Procedure would be amended, effective January 1, 2021, to read:

1   **§ 1010.6**

2  
3   (a) \* \* \*

4  
5   (b) A trial court may adopt local rules permitting electronic filing of documents, subject to rules  
6   adopted pursuant to subdivision (e) and the following conditions:

7  
8   (1) A document that is filed electronically shall have the same legal effect as an original paper  
9   document.

10  
11   (2)(A) When a document to be filed requires the signature of any person, not under penalty of  
12   perjury, the document shall be deemed to have been signed by ~~the~~ that person who filed the  
13   ~~document electronically.~~ if filed electronically and if either of the following conditions is  
14   satisfied:

15  
16   (i) The filer is the signer.

17  
18   (ii) The person has signed the document pursuant to the procedure set forth in a rule of court.

19  
20   (B) When a document to be filed requires the signature, under penalty of perjury, of any person,  
21   the document shall be deemed to have been signed by that person if filed electronically and if  
22   either of the following conditions is satisfied:

23  
24   (i) The person has signed a printed form of the document before, or on the same day as, the date  
25   of filing. The attorney or other person filing the document represents, by the act of filing, that the  
26   declarant has complied with this section. The attorney or other person filing the document shall  
27   maintain the printed form of the document bearing the original signature until final disposition of  
28   the case, as defined in subdivision (c) of Section 68151 of the Government Code, and make it  
29   available for review and copying upon the request of the court or any party to the action or  
30   proceeding in which it is filed.

31  
32   (ii) The person has signed the document using a computer or other technology pursuant to the  
33   procedure set forth in a rule of court adopted by the Judicial Council by January 1, 2019.

34  
35   (3) Any document received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on  
36   a court day shall be deemed filed on that court day. Any document that is received electronically  
37   on a noncourt day shall be deemed filed on the next court day.

38  
39   (4) The court receiving a document filed electronically shall issue a confirmation that the  
40   document has been received and filed. The confirmation shall serve as proof that the document  
41   has been filed.

1  
2 (5) Upon electronic filing of a complaint, petition, or other document that must be served with a  
3 summons, a trial court, upon request of the party filing the action, shall issue a summons with the  
4 court seal and the case number. The court shall keep the summons in its records and may  
5 electronically transmit a copy of the summons to the requesting party. Personal service of a  
6 printed form of the electronic summons shall have the same legal effect as personal service of an  
7 original summons. If a trial court plans to electronically transmit a summons to the party filing a  
8 complaint, the court shall immediately, upon receipt of the complaint, notify the attorney or party  
9 that a summons will be electronically transmitted to the electronic address given by the person  
10 filing the complaint.

11  
12 (6) The court shall permit a party or attorney to file an application for waiver of court fees and  
13 costs, in lieu of requiring the payment of the filing fee, as part of the process involving the  
14 electronic filing of a document. The court shall consider and determine the application in  
15 accordance with Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the  
16 Government Code and shall not require the party or attorney to submit any documentation other  
17 than that set forth in Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the  
18 Government Code. Nothing in this section shall require the court to waive a filing fee that is not  
19 otherwise waivable.

20  
21 (7) A fee, if any, charged by ~~the court~~, an electronic filing manager, or an electronic filing  
22 service provider to process a payment for filing fees and other court fees shall not exceed the  
23 costs incurred in processing the payment.

24  
25 (8) The court may charge fees of no more than the actual cost of the electronic filing and service  
26 of the documents. The court shall waive any fees charged if the court deems a waiver  
27 appropriate, including in instances when a party has received a fee waiver.

28  
29 (c) If a trial court adopts rules conforming to subdivision (b), it may provide by order, subject to  
30 the requirements and conditions stated in subdivision (b) and the rules adopted by the Judicial  
31 Council under subdivision (f), that all parties to an action file and serve documents electronically  
32 in a class action, a consolidated action, a group of actions, a coordinated action, or an action that  
33 is deemed complex under Judicial Council rules, provided that the trial court's order does not  
34 cause undue hardship or significant prejudice to any party in the action.

35  
36 (d) A trial court may, by local rule, require electronic filing and service in civil actions, subject to  
37 the requirements and conditions stated in subdivision (b), the rules adopted by the Judicial  
38 Council under subdivision (f), and the following conditions:

39  
40 (1) The court shall have the ability to maintain the official court record in electronic format for  
41 all cases where electronic filing is required.  
42

1 (2) The court and the parties shall have access to more than one electronic filing service provider  
2 capable of electronically filing documents with the court or to electronic filing access directly  
3 through the court. ~~The court may charge fees of no more than the actual cost of the electronic~~  
4 ~~filing and service of the documents.~~ Any fees charged by an electronic filing service provider  
5 shall be reasonable. ~~The court, an~~ An electronic filing manager, or an electronic filing service  
6 provider shall waive any fees charged if the court deems a waiver appropriate, including in  
7 instances where a party has received a fee waiver.

8  
9 (3) The court shall have a procedure for the filing of nonelectronic documents in order to prevent  
10 the program from causing undue hardship or significant prejudice to any party in an action,  
11 including, but not limited to, unrepresented parties. The Judicial Council shall make a form  
12 available to allow a party to seek an exemption from mandatory electronic filing and service on  
13 the grounds provided in this paragraph.

14  
15 (4) Unrepresented persons are exempt from mandatory electronic filing and service.

16  
17 (5) Until January 1, 2021, a local child support agency, as defined in subdivision (h) of Section  
18 17000 of the Family Code, is exempt from a trial court's mandatory electronic filing and service  
19 requirements, unless the Department of Child Support Services and the local child support  
20 agency determine it has the capacity and functionality to comply with the trial court's mandatory  
21 electronic filing and service requirements.

22  
23 (e) The Judicial Council shall adopt uniform rules for the electronic filing and service of  
24 documents in the trial courts of the state, which shall include statewide policies on vendor  
25 contracts, privacy, and access to public records, and rules relating to the integrity of electronic  
26 service. These rules shall conform to the conditions set forth in this section, as amended from  
27 time to time.

28  
29 (f) The Judicial Council shall adopt uniform rules to permit the mandatory electronic filing and  
30 service of documents for specified civil actions in the trial courts of the state, which shall include  
31 statewide policies on vendor contracts, privacy, access to public records, unrepresented parties,  
32 parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating  
33 to the integrity of electronic service. These rules shall conform to the conditions set forth in this  
34 section, as amended from time to time.

35  
36 (g) \* \* \*