

Invitation to Comment

Title	Proposed Orders: Electronic Filing, Submission, and Service (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt <i>Proposed Order (Cover Sheet)</i> (form EFS-020))
Summary	The California Rules of Court would be amended to provide a procedure for the filing and submission of proposed orders to the court by electronic means, and a <i>Proposed Order (Cover Sheet)</i> would be adopted to facilitate the electronic filing of a copy of proposed orders. The rule on service of proposed orders would be amended to allow for electronic service of these orders.
Source	Court Technology Advisory Committee Hon. Ming W. Chin, Chair Civil and Small Claims Advisory Committee, Hon. Dennis M. Perluss, Chair
Staff	Patrick O'Donnell, Supervising Attorney patrick.o'donnell@jud.ca.gov, 415-865-76651

Background

In California, the courts and litigants have begun to use electronic filing and service. As e-filing and e-service become increasingly available, there is a benefit to expanding the electronic filing and service procedures to accommodate documents not typically “filed” but otherwise submitted to the courts. There is especially a need to develop standardized procedures for electronically submitting proposed orders and for serving these documents electronically on the parties in a case.

Currently, the method of electronically handling proposed orders is not formalized by rules of court. Courts that have e-filing have developed various practices for addressing the electronic submission of proposed orders—most typically by e-mail. Also, the rules on proposed orders currently require that they be served either personally or by mail. In order to facilitate the electronic submission of proposed orders in a more consistent and predictable manner, the rules on submission of proposed orders to the court would be modernized. The rules would also be amended to permit the electronic service of proposed orders.

Proposal

To facilitate the electronic filing and service of proposed orders, this proposal recommends:

1. Amending rules 2.252 and 3.1312 of the California Rules of Court to provide for the electronic submission and service of proposed orders; and
2. Adopting *Proposed Order (Cover Sheet)* (form EFS-020) to facilitate the electronic filing and submission of these orders.

The text of the rule and a copy of the form are attached at the end of this Invitation to Comment.

Rules

Rule 2.252 of the California Rules of Court, concerning the documents that may be filed electronically, would be amended to add proposed orders to the list.

Rule 3.1312, on proposed orders, would be amended to specify the procedures for electronically submitting proposed orders. If a proposed order is submitted to the court electronically in a case where the parties are electronically filing documents under rules 2.250–2.261, two versions of the proposed order would need to be submitted:

1. A version of the proposed order must be attached to a completed *Proposed Order (Cover Sheet)* (form EFS-020), and the combined document in Portable Document Format (PDF) must be filed electronically; and
2. A version of the proposed order in an editable word-processing format must also be sent electronically to the court.

Rule 3.1312 would also be amended to modify the manner in which proposed orders are served. (See rule 3.1312(a).) It presently provides that proposed orders are to be served either by mail or personal delivery.

This proposal would amend that provision to provide that the party prevailing on any motion must, within five days of the ruling, serve by personal delivery, electronic service, fax transmission, express mail, or other means authorized by law, and reasonably calculated to ensure delivery to the other party or parties no later than the close of the next business day, a proposed order for approval as conforming to the court's order.

Form

To implement rule 3.1312 on the submission of proposed orders to the court, this proposal recommends the approval of *Proposed Order (Cover Sheet)* (form EFS-020). This form would be used to file a copy of any proposed order electronically. The *Proposed Order (Cover Sheet)* and the attached proposed order would be electronically filed with by the

court in a PDF version and become part of the record. This document would provide a record on appeal.

The party would also be required to electronically submit a version of the proposed order in an editable word-processing format to an address provided by the court. (See Cal. Rules of Court, amended rule 3.1312(e).) This version could be used by the judicial officer to prepare his or her order.

Rules 2.252 and 3.1312 of the California Rules of Court would be amended, effective January 1, 2011, to read:

1 **Rule 2.252. Documents that may be filed electronically**

2
3 **(a) In general**

4
5 A court may permit electronic filing of a document in any action or proceeding
6 unless the rules in this chapter or other legal authority expressly prohibit electronic
7 filing.

8
9 **(b) Original documents**

10
11 In a proceeding that requires the filing of an original document, an electronic filer
12 may file a scanned copy of a document if the original document is then filed with
13 the court within 10 calendar days.

14
15 **(c) Application for waiver of court fees and costs**

16
17 The court may permit electronic filing of an application for waiver of court fees and
18 costs in any proceeding in which the court accepts electronic filings.

19
20 **(d) Orders and judgments**

21
22 The court may electronically file any notice, order, minute order, judgment, or other
23 document prepared by the court.

24
25 **(e) Proposed orders**

26
27 Proposed orders may be filed and submitted electronically as provided in rule
28 3.1312.

29
30 **(e)(f) Effect of document filed electronically**

- 31
32 (1) A document that the court or a party files electronically under the rules in this
33 chapter has the same legal effect as a document in paper form.
34
35 (2) Filing a document electronically does not alter any filing deadline.
36

1 **Rule 3.1312. Preparation of proposed order**

2
3 **(a) Prevailing party to prepare**

4
5 Unless the parties waive notice or the court orders otherwise, the party prevailing
6 on any motion must, within five days of the ruling, ~~mail or deliver~~ serve by personal
7 delivery, electronic service, fax transmission, express mail, or other means
8 authorized by law and reasonably calculated to ensure delivery to the other party or
9 parties no later than the close of the next business day a proposed order ~~to the other~~
10 ~~party~~ for approval as conforming to the court's order. Within five days after ~~the~~
11 ~~mailing or delivery~~ service, the other party or parties must notify the prevailing
12 party as to whether or not the proposed order is so approved. The opposing party or
13 parties must state any reasons for disapproval. Failure to notify the prevailing party
14 within the time required shall be deemed an approval. The extensions of time based
15 on a method of service provided under Code of Civil Procedure section 1013,
16 ~~relating to service of papers by mail,~~ any statute or rule does do not apply to this
17 rule.

18
19 **(b) Submission of proposed order to court**

20
21 The prevailing party must, upon expiration of the five-day period provided for
22 approval, promptly transmit the proposed order to the court together with a
23 summary of any responses of the other parties or a statement that no responses were
24 received.

25
26 **(c) Failure of prevailing party to prepare ~~form~~ proposed order**

27
28 If the prevailing party fails to prepare and submit a proposed order as required by
29 (a) and (b) above, any other party may do so.

30
31 **(d) Motion unopposed**

32
33 This rule does not apply if the motion was unopposed and a proposed order was
34 submitted with the moving papers, unless otherwise ordered by the court.

35
36 **(e) Submission of proposed order by electronic means**

37
38 If a proposed order is submitted to the court electronically in a case in which the
39 parties are electronically filing documents under rules 2.250–2.261, two versions of
40 the proposed order must be submitted:

1 (1) A version of the proposed order must be attached to a completed *Proposed*
2 *Order (Cover Sheet)* (form EFS-020), and the combined document in Portable
3 Document Format (PDF) must be filed electronically; and

4
5 (2) A version of the proposed order in an editable word-processing format must
6 also be sent electronically to the court.

7
8 Each court that provides for electronic filing must provide an electronic address or
9 addresses to which the editable versions of proposed orders are to be sent and must
10 specify any particular requirements regarding the editable word-processing format
11 for proposed orders.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY <p style="text-align: center;">DRAFT 04-1-10</p> <p style="text-align: center;">NOT APPROVED BY JUDICIAL COUNCIL</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____ OTHER: _____	CASE NUMBER: _____
	JUDICIAL OFFICER: _____
PROPOSED ORDER (COVER SHEET)	DEPT.: _____

NOTE: This cover sheet is to be used to electronically submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order *(specify):*

2. Title of the proposed order *(specify):*

3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding:
 - b. Date and time:
 - c. Place:

4. The proposed order was served on the other parties in the case.

 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE OF PARTY OR ATTORNEY)

Item SPR10-21 Response Form

Title: **Proposed Orders: Electronic Submission of Proposed Orders** (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt form EFS-020)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.