

Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 29, 2010

Title

Electronic Service and Filing: Service, Filing, and Submission of Proposed Orders

Rules, Forms, Standards, or Statutes Affected Amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt Form EFS-020

Recommended by

Court Technology Advisory Committee Hon. Ming W. Chin, Chair

Civil and Small Claims Advisory Committee, Hon. Dennis M. Perluss, Chair

Agenda Item Type

Action Required

Effective Date January 1, 2011

Date of Report September 17, 2010

Contact

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Executive Summary

The Court Technology and the Civil and Small Claims Advisory Committees recommend amendments to the California Rules of Court to establish a new procedure for electronically serving, filing, and submitting proposed orders in civil cases. The procedure would require a party filing documents electronically (1) to file a copy of its proposed order attached to a cover sheet, and (2) to submit to the court a version of the proposed order in an editable word-processing format. The committees further recommend the adoption of a mandatory cover sheet to be affixed in front of the copy of the proposed order filed with the court. The combined cover sheet and attached order filed with the court will provide a record of the proposed order. The editable version of the proposed order submitted to the court will be made available to the court for use in preparing its final order.

Recommendation

The Court Technology and the Civil and Small Claims Advisory Committees recommend that the Judicial Council, effective January 1, 2011:

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

The text of the amended rules and the new form are attached at pages 10–13.

Previous Council Action

The Judicial Council adopted the original version of rule 2.252, on the list of documents that may be filed electronically, effective January 1, 2003; the list does not include proposed orders. The council originally adopted rule 3.1312, on the preparation of proposed orders, effective July 1, 1992; the rule does not address the preparation and submission of proposed orders by electronic means.

Rationale for Recommendation

Parties are beginning to serve and file documents electronically. The law is changing to authorize, and indeed to encourage, electronic service and filing of documents. (See Code Civ. Proc., § 1010.6; Cal. Rules of Court, rules 2.250–2.260.) However, the current rules of court do not specify how a proposed order is to be served on other parties or submitted to the court if a party is serving and filing documents electronically. This proposal would provide a procedure and create a mandatory Judicial Council form to implement that procedure.

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 procedure 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 will need to be submitted:

• 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

• A version of the proposed order in an editable word-processing format must also be sent electronically to the court, with a copy of the e-mail and proposed order also being sent to all parties in the action.

Each court that allows electronic filing must provide an electronic address or addresses to which the editable versions of proposed orders are to be sent and must specify any particular requirements regarding the editable word-processing format for proposed orders. (Rule 3.1312(c).)

In addition, rule 3.1312 would be amended to modify the manner in which proposed orders are served on parties. (See rule 3.1312(a).) The rule presently provides that, within five days of the ruling, the party prevailing on a motion must serve a proposed order either by mail or personal delivery. The amended rule would provide that the party prevailing on any motion must serve the proposed order by any 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. This amendment is intended to permit service not only by personal delivery, but also by fax, express mail, and electronic means. As electronic service becomes more widely accepted, it is anticipated that this fast and cost-effective means of service will frequently be used to serve proposed orders.

Form

To implement rule 3.1312 on the submission of proposed orders to the court, this proposal recommends the adoption of *Proposed Order (Cover Sheet)* (form EFS-020). This mandatory form would be used to electronically file a copy of any proposed order. The *Proposed Order (Cover Sheet)* with the proposed order attached would be electronically filed with the court in PDF format. The combined PDF 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 rule 3.1312(c).) This version could be used by the judicial officer to prepare his or her order.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment between April 19 and June 18, 2010, as part of the regular spring comment cycle. Ten comments were received on this proposal. The commentators included attorneys, four superior courts, a legal publisher, a local bar association, and the State Bar's Committee on Administration of Justice. The comments were generally favorable, though some of the commentators suggested specific modifications to amended rules 2.252 and 3.1312 and to the *Proposed Order (Cover Sheet)* (form EFS-020).

Rule 2.252: Comments and Alternatives

Several commentators suggested modifications to the language in proposed rule 2.252. A legal publisher suggested changing new subdivision (e) from "Proposed orders may be filed and

¹ A chart summarizing the comments and the committees' responses is attached at pages 14–22.

submitted electronically as provided in rule 3.1312" to "The court may permit electronic filing and submission of proposed orders as provided in rule 3.1312." (Comment 3.) The State Bar Committee on Administration of Justice (CAJ) suggested modifying subdivision (e), but differently, to read: "Proposed orders may be filed <u>electronically</u> and submitted <u>electronically</u> as provided in rule 3.1312." (Comment 6.) The Superior Court of Ventura County suggested a third alternative: "Proposed orders may be submitted for filing electronically as provided in rule 3.1312." (Comment 10.) The committees concluded that the language of subdivision (e) as originally proposed is clear and does not need to be changed.

The Superior Court of Ventura County suggested amending rule 2.252(f) to add a new item (3) that would read: "(3) Submitting a proposed order for filing does not automatically deem the document to be a filed order of the court." (Comment 10.) The committees discussed this change and concluded that it is unnecessary. A proposed order is never a filed order of the court. Also, placing such a statement in the rule that lists permissible electronically filed documents, but not in other rules on proposed orders, could be confusing.

Rule 3.1312: Comments and Alternatives

Several suggestions were made to modify the language of rule 3.1312. One commentator suggested changing the title of the rule from "Preparation of proposed order" to "Preparation <u>and submission</u> of proposed order." (Comment 3.) The committees agreed that this modification would make the title more accurate and have incorporated that change into the version of the rule submitted with this report.

Rule 3.1312(a) concerns the service on the other parties in the case of a proposed order by the prevailing party on a motion. The proposal as circulated would have amended that provision to provide that the party prevailing on any motion must, within five days of the ruling on the motion, 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. Based on the comments, the committees recommend modifying this provision to simply refer to any means of service authorized by law and reasonably calculated to ensure delivery no later than the close of the next business day. (See comment 3.) The longer recitation of methods of service in the rule appeared to be both unnecessarily detailed and, at the same time, insufficiently complete as a legal explanation of what methods of service may be legally authorized.²

A court family law division manager also had some concerns about subdivision (a). She commented that the proposed change in the rule would not be practical for many self-represented litigants who have no immediate access to fax transmissions, electronic service, or express mail.

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² To address this dilemma, the Civil and Small Claims Advisory Committee may in the future explore developing rules or information sheets to clarify the methods of authorized service, which might then be cross-referenced in rules such as rule 3.1312.

She was concerned that the removal of the word "mail" would cause confusion and unnecessary complication for self-represented litigants who will have to research the meaning of "or other means authorized by law." She also thought that the requirement that a party ensure delivery of proposed orders by the next business day places an undue burden on those with limited income and no access to such service, and in fact eliminates regular mail as a means of service. (Comment 4.) The committees recognized that the proposed amendments to subdivision (a) would preclude service by mail and would not fully explain the laws on service. Nonetheless, for the reasons stated below, they support retaining the requirement that a prevailing party on a motion must, within five days after the ruling, serve a copy of a proposed order on other parties by an authorized means of service calculated to ensure delivery by the close of the next business day.

Because of the need for expedited service of certain types of papers, the methods of service specified in subdivision (a) have been found to be appropriate in other comparable situations. (See, e.g., Code Civ. Proc., § 1005(c) (opposition and reply papers for motions shall be served by a means reasonably calculated to ensure delivery no later than the close of the next business day).) Most proposed orders relating to civil motions will be submitted by attorneys. So the impact on self-represented litigants who want to serve proposed orders by mail is likely to be minimal, whereas the benefits of having proposed orders served expeditiously on other parties, particularly by electronic means, is substantial. It will not only reduce costs, but also help ensure that proposed orders are processed in a timely manner after the date of the ruling.

With respect to subdivision (c) (which had been circulated as (e)), an attorney suggested adding language that would state expressly that a party submitting a proposed in an editable wordprocessing format must serve a copy of that version of the order on others. (Comment 1.) Specifically, the commentator proposed modifying the rule to read (new text underlined): "A version of the proposed order in an editable word-processing format must also be sent electronically to the court, with a copy of the e-mail and proposed order also being sent to opposing counsel." The commentator noted that this proposed modification would make explicit the requirement that a party must serve opposing counsel with a copy of any e-mail it sends to the court. Also, requiring a party to copy opposing counsel would ensure that the party does not break any rules regarding ex parte communications with the court. And it would ensure that opposing counsel has an opportunity to object to the proposed order in a timely fashion. The commentator's proposed language tracks Section 2(h) of the Electronic Case Filing Administrative Policies and Procedures issued by the United States District Court for the Southern District of California. The committees agreed that it was a good idea to add language to rule 3.1312(c) expressly stating that the editable proposed order submitted to the court must be served; however, they have modified the proposed language to provide that service of the editable proposed order must be made on "all parties in the action" rather than on "opposing counsel."

Regarding new subdivision (c) (circulated as (e)) on the electronic submission of proposed orders, a commentator suggested moving the language in that subdivision to the end of (b) on

submission of proposed orders. (Comment 3.) The committees concluded that, instead of incorporating proposed subdivision (e) into (b), the new subdivision should be kept separate but should be relocated from (e) to (c). Thus, the two subdivisions on submitting proposed orders have been located together. In addition, subdivisions (c) and (d) have been relettered as subdivisions (d) and (e). This overall organization should make the rule clearer and more logical.

A judge, designated by his court to review the proposal, also commented on subdivision (c) (circulated as (e)). He observed that the provision for submission of the proposed order in an editable word-processing format creates a potential problem in terms of the address to which the order in editable word-processing format is to be submitted. He asked: Will each individual trial court or judge be expected to provide an address for submission? If not, will the clerk's office have an address for submissions; and if so, how will the submitted proposed orders be transmitted to the individual trial court or judge that will be expected to edit and enter the order? (Comment 7.) Because of the differences in the trial courts, the rule leaves it to each court to determine how to notify the public about the court's e-mail addresses and its specific formatting requirements, if any. Subdivision (c) provides, in part: "Each court that provides for electronic filing must provide an electronic address or addresses to which the editable versions of proposed orders are to be sent and must specify any particular requirements regarding the editable word-processing format for proposed orders." Once the courts have determined their particular procedures and requirements, they can inform the public of the addresses for submission and any particular requirements for editable proposed orders through local rules or court orders.

The judge also raised two questions about rule 3.1312 that are beyond the scope of the rule as circulated. (Comment 7.) First, he asked whether a proposed order submitted with moving papers would be subject to the rule. Rule 3.1312, as amended, does not apply to proposed orders submitted with moving papers but only to proposed orders submitted after the court has ruled on the motion. An argument can be made that many of the procedures for submission and filing of proposed orders recommended in this proposal should also be applied to proposed orders submitted with motions; however, that is beyond the scope of the present proposed amendments to rule 3.1312. The committees will consider this comment in the future.

In addition, the judge remarked that placing the obligation of providing a summary of objections to a proposed order on the party submitting the order—as provided in current rule 3.1312(b)—does not conform to accepted practice. Again, this comment raises broader issues beyond those addressed in the current proposal. It will be considered in the future.

Finally, a commentator stated that the proposal to amend rule 3.1312 "perpetuates an unnecessary and time consuming procedure which makes litigation more expensive and causes needless delay." (Comment 2.) He contended that there is no need for the prevailing party to prepare an order once the court has ruled. He stated that courts have clerks who can prepare orders and mail them to the parties. If there is a continuing need for a party to prepare an order, a

local rule should require the moving party to prepare a proposed order and attach it to the motion; and, if the court does not like the format of the draft order, it can be changed at the time of the ruling. This comment, in effect, questions the underlying rationale of rule 3.1312 and recommends that, if proposed orders are needed, an alternative procedure should be used. These comments and suggestions are beyond the scope of the present proposal.

Proposed Orders (Cover Sheet): Comments and Alternatives

Several specific suggestions were made regarding the proposed new cover sheet. As a threshold matter, the Committee on Administration of Justice of the State Bar (CAJ) recommended that the form be made mandatory; this would be consistent with the language of rule 3.1312(c) (circulated as (e)), which requires the use of the form when proposed orders are filed and submitted electronically. (Comment 6.) The committees agreed with this recommendation and have modified the form to indicate that it is mandatory.

The CAJ also thought that it would be helpful to change the wording of the *Proposed Order* (*Cover Sheet*). First, the CAJ suggested that it would be appropriate to amend the Note in the box under the heading of form EFS-020 to state: "This cover sheet is to be used to electronically <u>file</u> and submit to the court a proposed order." The committees agreed with this suggestion and have added the suggested language. The CAJ also suggested changes to the proof of service on the second page of the *Proposed Order* (*Cover Sheet*). In making these suggestions, the CAJ assumed that rule 3.1312 as amended would require a party to submit a proposed order in editable word-processing format to the court, but not to the parties in the case. However, because the committees are recommending that rule 3.1312 be revised to require service of the editable version of the proposed order on all parties in the action, these changes to the form would not be appropriate.

A judge commented that the proof of electronic service on the reverse side of the *Proposed Order (Cover Sheet)* does not appear to recognize the use of web based e-service providers and provide for electronic service pursuant to an order for electronic service under rule 2.253. The commentator is correct that the proof of service on form EFS-020 is not expressly designed for web-based e-service and service pursuant to court order. However, the proof of electronic service on the form can be used for web-based e-service providers if the "electronic service address" provided by a party is that of such a provider. Also, web-based e-service providers and others are free to develop and use their own proofs of electronic service. The proofs of service on all Judicial Council forms are only for the convenience of the parties. (See rule 1.41.) The proofs of e-service on all of the new EFS forms have been designed principally for individual users rather than web based e-service providers, which are capable of preparing and using their own proofs. It is unlikely that web-based e-service providers would use the proof of service on page 2 of form EFS-020 even if it were revised to explicitly recognize them. Hence, the committees do not recommend revising the proof of service on form EFS-020 to accommodate web-based service providers.

Policy Implications

This proposal implements Judicial Council policy favoring the development of e-filing in the courts. (See Relevant Strategic Plan Goals and Operational Plan Objectives, below.) For e-filing to be effective, it is important to have a consistent procedure for litigants to use to electronically file and submit proposed orders to the courts.

Implementation Requirements, Costs, and Operational Impacts

This rules and form proposal is designed to assist courts that have e-filing and litigants who file electronically by providing a consistent statewide procedure for serving, filing, and submitting proposed orders electronically. The new procedure only affects those courts that have instituted e-filing. Courts implementing the procedure for proposed orders will need to provide notice to the public about where (i.e., to what e-mail addresses) to send proposed orders in an editable word-processing format. The courts will need to manage the proposed orders submitted electronically and distribute the editable versions to judicial officers. And the courts that have specific requirements about the format of the editable documents (e.g., that they must be in a Word version) will need to inform the public of those requirements. Once the courts have determined their particular procedures and requirements, they can inform the public of the addresses for submission and any particular requirements for editable proposed orders through local rules or court orders. So there will be some administrative impacts of this proposal. These impacts should not be significant and should be outweighed by the benefits to judicial officers and litigants from having available editable versions of proposed orders.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal furthers the Judicial Council goal of modernizing management and administration (Goal III) and the objective of developing and implementing effective case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases (Objective 5). Under the current *Operational Plan for California's Judicial Branch*, 2008-2011, a desired outcome under Objective 5 is the increased availability of electronic filing, which this proposal helps implement. The proposal also promotes access to justice (Goal I).

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³ One court executive did express concerns to some members of the committees that this proposal establishing procedures for submitting proposed order electronically might impose administrative burdens on the courts. She suggested that the procedures for the electronic submission of proposed orders might be left to each court. The committees did not pursue this alternative. When the Court Technology Advisory Committee met to review this proposal, it noted that the committee will be periodically considering the impacts of this and other e-filing and e-service rules and statutes on the courts on an ongoing basis, and will from time to time be recommending appropriate changes in response to the experience of the courts and litigants with the rules and statutes on e-filing and e-service.

Attachments

- 1. Cal. Rules of Court, rules 2.252 and 3.1312, at pages 10–11
- 2. Form EFS-020, at pages 12–13
- 3. Chart of comments, at pages 14–22

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

Rule 2.252. Documents that may be filed electronically

3 (a)–(d) * * *

1 2

(e) Proposed orders

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

(e)(f) Effect of document filed electronically

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

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

Rule 3.1312. Preparation and submission of proposed order

(a) Prevailing party to prepare

Unless the parties waive notice or the court orders otherwise, the party prevailing on any motion must, within five days of the ruling, mail or deliver serve by any 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 to the other party for approval as conforming to the court's order. Within five days after the mailing or delivery service, the other party or parties must notify the prevailing party as to whether or not the proposed order is so approved. The opposing party or parties must state any reasons for disapproval. Failure to notify the prevailing party within the time required shall be deemed an approval. The extensions of time based on a method of service provided under Code of Civil Procedure section 1013, relating to service of papers by mail, any statute or rule does do not apply to this rule.

(b) * * *

(c) Submission of proposed order by electronic means

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

1	<u>(1)</u>	A version of the proposed order must be attached to a completed <i>Proposed Order</i>
2		(Cover Sheet) (form EFS-020), and the combined document in Portable Document
3		Format (PDF) must be filed electronically; and
4		
5	<u>(2)</u>	A version of the proposed order in an editable word-processing format must also be
6		sent electronically to the court, with a copy of the e-mail and proposed order also
7		being sent to all parties in the action.
8		
9	Each co	ourt that provides for electronic filing must provide an electronic address or addresses
10	to whic	h the editable versions of proposed orders are to be sent and must specify any
11	particul	ar requirements regarding the editable word-processing format for proposed orders.
12		
13		
14	(c) (d)Failu	re of prevailing party to prepare form <u>proposed order</u>
15		
16	If the	prevailing party fails to prepare and submit a proposed order as required by (a) and
17	(b) al	pove, any other party may do so.
18		
19	(d)(e) Mo	otion unopposed
20		
21	This	rule does not apply if the motion was unopposed and a proposed order was submitted
22	with	the moving papers, unless otherwise ordered by the court.

EFS-020

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):	
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	JUDICIAL OFFICER:
OTHER:	
	DEPT.:
PROPOSED ORDER (COVER SHEET)	
NOTE: This cover sheet is to be used to electronically file and submit to the court a order sent electronically to the court must be in PDF format and must be attached t version of the proposed order in an editable word-processing format must be sent t cover sheet and the attached proposed order in PDF format are filed.	o this cover sheet. In addition, a
Name of the party submitting the proposed order:	
2. Title of the proposed order:	
3. The proceeding to which the proposed order relates is:	
a. Description of proceeding:	
b. Date and time:	
c. Place:	
C. 1 IQUE.	
4. The proposed order was served on the other parties in the case.	
)	
(TYPE OR PRINT NAME) (SIGN	ATURE OF PARTY OR ATTORNEY)

		EFS-02
CASE NAME:		CASE NUMBER:
	PROOF OF ELECTRONIC SERVICE PROPOSED ORDER	

	PROOF OF ELECTRONIC SERVICE PROPOSED ORDER
1.	I am at least 18 years old and not a party to this action.
	a. My residence or business address is (specify):
	b. My electronic service address is (specify):
2.	I electronically served the <i>Proposed Order (Cover Sheet)</i> with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:
	a. On (name of person served) (If the person served is an attorney, the party or parties represented should also be stated):
	b. To (electronic service address of person served):
	c. On (date):
	d. At (time):
	Electronic service of the <i>Proposed Order (Cover Sheet)</i> with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.
l d	eclare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
	ite:
	•
	(TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)

SPR10-21
Proposed Orders: Electronic Submission of Proposed Orders (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt form EFS-020)

	Commentator	Position	Comment	Committees' Response
1.	Damon Thayer Jenner & Block Santa Monica	AM	Although I generally support SPR10-21, which seeks to facilitate the electronic filing of a copy of proposed orders, I believe that an implicit assumption needs to be made explicit in the proposal. I recommend the following modification to proposed Rule of Court 3.1312(e)(2) (new language underlined): A version of the proposed order in an editable word-processing format must also be sent electronically to the court, with a copy of the e-mail and proposed order also being sent to opposing counsel. This proposed modification would make explicit the requirement that a party must carbon copy opposing counsel on any email it sends to the court. Requiring a party to copy opposing counsel will ensure that the party does not break any rules regarding ex parte communications with the court. It will also ensure that opposing counsel has an opportunity to object to the proposed order in a timely fashion. The proposed language tracks Section 2(h) of the Electronic Case Filing Administrative Policies and Procedures issued by the United States District Court for the Southern District of California.	The committees reviewed this suggestion and concluded that it would be a good idea to add language to rule 3.1312(e) clarifying that the editable proposed order submitted to the court must be served; however, they recommend that the language should provide that service of the editable proposed order must be made not just on "opposing counsel," but on "all parties to the action."
2.	Gerald H. Genard Danville	NI	This proposal perpetuates an unnecessary and time consuming procedure which makes	This comment questions the underlying premises of rule 3.1312. It is beyond the scope of the

SPR10-21
Proposed Orders: Electronic Submission of Proposed Orders (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt form EFS-020)

	Commentator	Position	Comment	Committees' Response
			litigation more expensive and causes needless delay. There is no need for the prevailing party to prepare an order once the court has ruled. Courts have clerks who can prepare orders and mail them to the parties. Should there continue to be some need for a party to prepare an order, then the local rule should require the moving party to prepare a proposed order and attach it to the motion. If the court doesn't like the format of the draft order, it can be changed at the time of the ruling.	current proposal which would amend the current rule to provide procedures for electronic filing and service of proposed orders.
3.	Julie A. Goren Author Sherman Oaks	AM	1. Rule 2.252 (e) - Change it to "The court may permit electronic filing and submission of proposed orders as provided"	1. The committees concluded that the language of rule 2.252(e) as proposed is sufficiently clear. See also responses to other alternative language for subdivision (e) proposed in comments 6 and 10.
			2. Rule 3.1312 - In the title add "and submission" after "preparation".	2. The committees agreed with this suggestion.
			3. Starting with line 3, delete references to specific service methods and insert "any" in their place, i.e., "serve by any means authorized"	3. The committees agreed with this suggestion.
			4. Move the language in new proposed (e) to the end of (b), and begin: "Where permitted by the court, the proposed order may be submitted"	4. The committees recommend that, instead of incorporating (e) into (b), the new subdivison should be kept separate but should be relocated to from (e) to (c). Thus, the two subdivisions on submitting proposed orders would be located together. And subdivisions (c) and (d) would be

SPR10-21
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	Commentator	Position	Comment	Committees' Response
				relettered as subdivisons (d) and (e). This overall organization of the rule will be clearer and more logical.
4.	Linda Daeley Manager, Family Law Division Superior Court of Orange County	AM	The change to rule 3.1312(a) is not practical for many self-represented litigants who have no immediate access to fax transmissions, electronic service or express mail. The removal of the word "mail" will cause confusion and unnecessary complication for self-represented litigants who will have to research the meaning of "or other means authorized by law." The requirement that a party ensures delivery by the next business day places an undue burden on those with limited income and no access to such service, and in fact eliminates regular mail as a means of service.	The committees support retaining the requirement for service of proposed orders on other parties by the close of the next business day, even though such a rule would preclude service by mail. Because of the need for expeditious service of certain types of papers, such a service requirement has been found to be appropriate in other comparable situations. (See, e.g., Code Civ. Proc., § 1005(c) (opposition and reply papers for motions shall be served by means reasonably a calculated to ensure delivery no later than the close of the next business day).) Most proposed orders will be submitted by attorneys. So the impact on self-represented litigants who want to serve proposed orders by mail is likely to be minimal, whereas the benefits of having proposed orders served expeditiously on other parties, particularly by electronic means, is substantial. It will not only reduce costs, but also help ensure that proposed orders are processed in a timely manner after the date of the ruling.
5.	Orange County Bar Association Newport Beach By Lei Lei Wang Ekvall, President	A	No specific comment.	No response required.

SPR10-21
Proposed Orders: Electronic Submission of Proposed Orders (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt form EFS-020)

	Commentator	Position	Comment	Committees' Response
6.	State Bar of California's Committee on Administration of Justice (CAJ) San Francisco	AM	1. CAJ supports adding proposed orders to the list of documents in rule 2.252 that may be filed electronically.	1. CAJ's support for this proposal is noted.
	By Saul Bercovitch, Legislative Counsel		CAJ suggests that the wording of the proposed amendment to rule 2.252(e) be modified, to better track both the existing language in rule 2.252 (which refers to documents to be "filed electronically"), and the existing and proposed language in rule 3.1312, which refers to "submission of proposed order." With these changes, the rule would read as follows:	The committees concluded that the language of rule 2.252(e) as proposed is clear. See also responses to other alternative language for subdivision (e) proposed in comments 3 and 10.
			(e) Proposed orders Proposed orders may be filed electronically, and submitted electronically as provided in rule 3.1312.	
			2. CAJ believes that clarification should be provided on whether the <i>Proposed Order</i> (<i>Cover Sheet</i>) (Form EFS-020) is optional or mandatory. The footnote in the lower left corner of Form EFS-020 states "Form Approved for Optional Use," while the "NOTE" in the box under the heading states, "This cover sheet is to be used to electronically submit to the court a proposed order." In	2. The committees agreed that the form should be mandatory to be consistent with the rule.
			addition, the proposed amendment to add rule 3.1312(e) states: "A version of the proposed order must be attached to a completed <i>Proposed Order (Cover Sheet)</i> (form EFS-020), and the combined document in Portable Document	

SPR10-21
Proposed Orders: Electronic Submission of Proposed Orders (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt form EFS-020)

Commentator	Position	Comment	Committees' Response
		Format (PDF) must be filed electronically"	
		3. CAJ believes it would be helpful to change	3. The committees agreed that the first suggestion
		the wording of the <i>Proposed Order (Cover</i>	to modify the language in the Note box would
		Sheet) in three ways, to better track rule 2.252	make the instruction clearer and should be made.
		(which refers to documents to be "filed	However, assuming that rule 3.1312(e)(2)
		electronically") and rule 3.1312, which refers to	(relocated to rule 3.1312(c)(2)) is revised to
		"submission" of proposed orders to the court. In addition, as amended, rule 3.1312 will	provide for service of the editable version of the proposed order on all other parties as suggested
		require sending the proposed order in editable	by another commentator, the other suggested
		word-processing format to the court, but not to	changes to form EFS-020 would not be
		other parties. Accordingly, it may be	appropriate.
		appropriate to amend the NOTE in the box	прртортисе.
		under the heading of Form EFS-020 to state:	
		"This cover sheet is to be used to electronically	
		file, and submit to the court a proposed order."	
		Second, it may be appropriate to amend	
		Paragraph 2 of the Proof of Electronic Service	
		(Proposed Order) as follows: "I electronically	
		served Proposed Order (Cover Sheet) with a	
		proposed order in PDF format attached and	
		submitted to the court a proposed order in an	
		editable word-processing format as follows"	
		It may be appropriate to amend the statement	
		next to the check box in the <i>Proof of Electronic</i>	
		Service (Proposed Order) as follows:	
		"Electronic service of the <i>Proposed Order</i> (<i>Cover Sheet</i>) with the attached proposed order	
		in PDF format, and <u>submission or</u> service of the	
		proposed order in an editable word-processing	
		format on additional persons is described in an	
		•	
		attachment."	

SPR10-21
Proposed Orders: Electronic Submission of Proposed Orders (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt form EFS-020)

	Commentator	Position	Comment	Committees' Response
7.	Superior Court of Los Angeles County	AM	The Los Angeles Superior Court Civil & Small Claims Committee defers to the following comments of Judge Carl J. West, who is the court's expert on electronic filing and service. Comments on Rule 3. 1312. Preparation of Proposed Order a. Objections to proposed orders are generally filed with the Court. Placing the obligation of providing a summary of objections on the party submitting the proposed order does not conform to accepted practice. b. Will proposed orders submitted with the moving papers be subject to this rule?	a. This comment, which suggests modifying rule 3.1312(b) to change which party has the obligation to submit a summary of objections to the court, is beyond the scope of the current proposal and will be considered in the future. b. The amended rule does not apply to proposed orders submitted with moving papers but only to proposed orders submitted after the court has ruled. This comment raises a good question
			c. The provision for submission of the	whether the new procedures in rule 3.1312 should also apply to proposed orders submitted electronically with moving papers; however, it is beyond the scope of the proposed rule amendments. This comment may be considered as a proposal for further rule changes. c. As the commentator notes, there will be a
			proposed order in an editable word- processing format creates a potential problem	variety of issues relating to how courts will notify the public of the e-mail addresses to

SPR10-21
Proposed Orders: Electronic Submission of Proposed Orders (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt form EFS-020)

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		in terms of the address to which the order in editable word-processing format is to be submitted. Will each individual trial court/judge be expected to provide an address for submission? If not, will the Clerk's office have an address for submissions; and if so, how will the submitted proposed orders be transmitted to the individual trial court/judge that will be expected to edit and enter the order?	which proposed orders in editable form must be sent and the methods of transmission of proposed orders to the judges. These issues have been deliberately left to the discretion of the courts to determine based on their circumstances and preferred administrative procedures. Once the decisions are made, courts can inform the public of the addresses for submission and any particular requirements for editable proposed orders through local rules or court orders.
		d. The Proof of Electronic Service Form does not appear to recognize the use of web-based e-service providers and make provision for service pursuant to an Order for Electronic Service entered pursuant to Rule 2.253.	d. The commentator is correct that the proof of service on form EFS-020 is not expressly designed for web-based e-service and service pursuant to court order. However, the proof of electronic service on the reverse side of the <i>Proposed Order (Cover Sheet)</i> form can be used for web-based e-service providers if the "electronic service address" provided by a party is that of such a provider. Also, web-based e-service providers and others are free to develop and use their own proofs of electronic service. The proofs of service on all Judicial Council forms are only for the convenience of the parties. (See rule 1.41.) The proofs of e-service on all of the new EFS forms have been designed principally for individual users rather than web based e-service providers, who are capable of preparing and using their own proofs. It is

SPR10-21
Proposed Orders: Electronic Submission of Proposed Orders (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt form EFS-020)

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				unlikely that web-based e-service providers would use the proof of service on page 2 of form EFS-020 even if it were revised to explicitly recognize them. Hence, the committees do not recommend revising the proof of service on form EFS-020 to specifically accommodate web-based service providers.
8.	Superior Court of San Bernardino County By Debra Meyers Deputy Court Executive Officer/General Counsel	A	No comment.	No response required.
9.	Superior Court of San Diego County By Mike Roddy, Court Executive Officer	A	No specific comment.	No response required.
10.	Superior Court of Ventura County By Julie Camacho, Program Manager	AM	 (1) The court receives many proposed orders that are submitted to the court for approval/signature after a hearing has been conducted and the court has ordered a party to prepare and submit the ruling to the court. (2) The court also receives many proposed orders at the time that a motion is filed by a party. These orders are received in the court's case management system and lodged in the court file so that they are available to the court 	

SPR10-21
Proposed Orders: Electronic Submission of Proposed Orders (amend Cal. Rules of Court, rules 2.252 and 3.1312; adopt form EFS-020)

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		on the date of the hearing.	
		The Ventura Superior Court does not file stamp and only marks these documents as "received" on their face and in the court's case management system. The document is then routed to the judicial officer and later filed after the judicial officer has signed the order. It is important that the court staff, filers and judicial officers be able to differentiate from	
		those orders that are received and those that have been signed and filed.	
		The Ventura Superior Court recommends that the language in Rule 2.252(e) be modified to provide: "Proposed orders may be submitted for filing electronically as provided in rule 3.1312."	The committees concluded that the language of rule 2.252(e) as proposed is clear. See also responses to other alternative language for subdivision (e) proposed in comments 3 and 6.
		In addition, it is further recommended that Rule 2.252(f) be modified to add item 3 as follows: "(3) Submitting a proposed order for filing does not automatically deem the document to be a filed order of the court."	The committees did not think that it is necessary to add this subpart. A proposed order is never a filed order of the court. Also, it would be confusing to include such provision in this rule on electronic filing and submission of of proposed orders, when no such provison is in other rules on proposed orders.