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INVITATION TO COMMENT

SPR13-09

Title	Action Requested
Appellate Procedure: Signatures on Filed Documents	Review and Submit Comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 8.42 and amend rules 8.77 and 8.212	January 1, 2014
Proposed by	Contact
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

This proposal is intended to provide costs savings and efficiencies for litigants and for reviewing courts by making it easier to electronically file some documents in the Supreme Court and Court of Appeal and to use copies of signatures in some circumstances. This proposal originated from suggestions submitted by members of the Appellate Advisory Committee.

Background

Original signatures of opposing parties on filed documents

Currently, when original signatures of opposing parties are required on documents filed with the reviewing courts, litigants must typically mail or messenger the original signature page or pages to the person who will be filing the document. Court clerks must also try to verify that signatures on filed documents are originals. These practices absorb resources for both litigants and the courts.

In contrast, in many settings it is now common for signed documents to be scanned and e-mailed to recipients. California Rules of Court, rule 8.212(b)(1) already recognized this practice in the context of stipulations to extend the time to file a brief in a civil appeal. It provides that the original signature of only one party is necessary on the stipulation filed in the reviewing court; the signatures of the other parties are permitted to be in the form of copies of the signed signature page of the stipulation.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Signatures on electronically filed documents

Rules 2.250 – 2.261 address electronic filing of documents in the superior courts and rules 8.70–8.79 address electronic filing of documents in the Supreme Court and Court of Appeal. In most ways, these sets of rules are quite similar to each other. However, they currently differ with respect to the handling of documents that must be signed under penalty of perjury. Rule 2.257 does not require that a hard copy of such a signature be submitted to the court unless the court orders this. Instead, it provides that by electronically filing such a document, the filer certifies that the declarant signed a printed form of the document before the document was filed and the other parties may demand or the court may order the filing party to produce the original signed document for inspection and copying. In contrast, rule 8.77 currently provides that if a document to be filed electronically must be signed under penalty of perjury, the original, signed verification page or pages must be filed with the court within five calendar days after the document is electronically filed. This requirement in rule 8.77 has made it more difficult and expensive to electronically file some documents, such as proofs of service, in the appellate courts than in the superior courts. This, in turn, discourages electronic filing by litigants and makes this process less efficient and effective for the appellate courts.

The Proposal

This proposal is intended to provide significant costs savings and efficiencies for litigants and for reviewing courts by making two changes in the requirements relating to signatures on filed documents.

Original signatures of opposing parties on filed documents

This proposal would adopt a new rule, rule 8.42, applying the procedure in rule 8.212(b)(1), relating to signatures on stipulations to extend briefing time, to all documents filed in the Supreme Court or Court of Appeal that require the signatures of opposing parties. Under this proposed procedure, the original signature of only one party would be required on the document filed in the reviewing court; the signatures of the other parties could be in the form of copies of the signed signature page of the document. The proposal would also eliminate the current provision in rule 8.212 that specifically permits this procedure for stipulations to extend briefing time, since this provision would no longer be necessary if the proposed new rule 8.42 is adopted. Instead, a new provision would be added to the advisory committee comment accompanying rule 8.212 to alert rule users to rule 8.42.

Signatures on electronically filed documents

This proposal would make it easier to electronically file documents that must be signed under penalty of perjury in the Supreme Court and Court of Appeal by amending rule 8.77 to incorporate requirements for electronically filing such documents similar to those that apply in the superior courts under rule 2.257. The main difference between the procedures that would be established by the proposed amendments to rule 8.77 and the procedures in rule 2.257 is that the rule 8.77 procedures, like the procedures in proposed new rule 8.42, would allow parties filing electronically to collect signatures of opposing parties in the form of copies of the signed signature page of documents.

Alternatives Considered

The committee considered not recommending any change to these rules but concluded that amending these rules would reduce costs for the Supreme Court and Court of Appeal, thereby making it preferable to propose these amendments at this time.

The committee also considered proposing that the procedures established by rule 8.77 for signatures on electronically-filed documents be applicable to all filed documents, thus eliminating all requirements for filing any documents with original signatures. The committee decided, however, to focus only on those documents that must be signed by opposing parties because such documents generally present the most difficulties in gathering original signatures.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation burdens on either the superior courts or appellate courts and should provide significant cost savings for the Supreme Court and Court of Appeal.

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?
- Should proposed new rule 8.42 apply to all situations in which the signatures of multiple parties are required on a filed document, rather than just to situations in which the signatures of opposing parties are required?

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.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Rule 8.42 of the California Rules of Court would be adopted and rules 8.77 and 8.212 would be amended, effective January 1, 2014, to read:

Title 8. Appellate Rules

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

Chapter 1. General Provisions

Article 2. Service, Filing, Filing Fees, Form, and Number of Documents

Rule 8.42. Requirements for signatures of opposing parties on filed documents

When a document to be filed, such as a stipulation, requires the signatures of opposing parties, the original signature of at least one party must appear on the document filed in the reviewing court; the signatures of the other parties may be in the form of copies of the signed signature page of the document.

Advisory Committee Comment

Please note that rule 8.77 establishes different requirements for documents that are electronically filed.

Article 4. E-filing

Rule 8.77. Requirements for signatures on documents

(a) Documents signed under penalty of perjury

If a document to be filed electronically must be signed under penalty of perjury, ~~the document may be filed electronically provided that the original, signed verification page or pages are filed with the court within 5 calendar days.~~ the following procedure applies:

- (1) The document is deemed signed by the declarant if, before filing, the declarant has 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.
- (3) At any time after 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.

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

4
5 (5) At any time after the document is filed, the court may order the filing party to
6 produce the original signed document in court for inspection and copying by the
7 court. The order must specify the date, time, and place for the production and must
8 be served on all parties.

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10 **(b) Documents not signed under penalty of perjury**

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

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15 **(c) Documents requiring signatures of opposing parties**

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

19
20 (1) The party filing the document must obtain the signatures of all parties either in the
21 form of an original signature on a printed form of the document or in the form of a
22 copy of the signed signature page of the document. By electronically filing the
23 document, the electronic filer indicates that all parties have signed the document and
24 that the filer has the ~~signed original~~ signatures of all parties in a form permitted by
25 this rule in his or her possession.

26
27 (2) The party filing the document must maintain the original signed document and any
28 copies of signed signature pages and must make them available for inspection and
29 copying as provided in (a)(2). The court and any other party may demand production
30 of the original signed document and any copies of signed signature pages in the
31 manner provided in (a)(3)–(5).

32
33 ~~(2) The party filing the document must maintain the original, signed document and must~~
34 ~~make it available for inspection and copying at the request of the court or any other~~
35 ~~party.~~

36
37 ~~(3) At any time after the document is filed, any other party may serve a demand for~~
38 ~~production of the original signed document. The demand must be served on all other~~
39 ~~parties but need not be filed with the court.~~

40
41 ~~(4) Within five days of service of the demand under (3), the party on whom the demand~~
42 ~~is made must make the original signed document available for inspection and~~
43 ~~copying by all other parties.~~

44
45 ~~(5) At any time after the document is filed, the court may order the filing party to~~
46 ~~produce the original signed document in court for inspection and copying by the~~

1 court. The order must specify the date, time, and place for the production and must
2 be served on all parties.
3

4 **(d) Digital signature**

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6 A party is not required to use a digital signature on an electronically filed document.
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8 **(e) Judicial signatures**

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10 If a document requires a signature by a court or a judicial officer, the document may be
11 electronically signed in any manner permitted by law.
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14 **Chapter 2. Civil Appeals**

15 **Article 3. Briefs in the Court of Appeal**

16 **Rule 8.212. Service and filing of briefs¹**

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18 **(a) *****

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20 **(b) Extensions of time**

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22 (1) Except as otherwise provided by statute, the parties may extend each period under
23 (a) by up to 60 days by filing one or more stipulations in the reviewing court before
24 the brief is due. Stipulations must be signed by and served on all parties. ~~The original
25 signature of at least one party must appear on the stipulation filed in the reviewing
26 court; the signatures of the other parties may be in the form of copies of the signed
27 signature page of the stipulation.~~
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29

30
31 (2)–(4) ***

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33 **(c) *****

34 **Advisory Committee Comment**

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36 **Subdivision (a).** ***

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38 **Subdivision (b).** Extensions of briefing time are limited by statute in some cases. For example, under
39 Public Resources Code section 21167.6(h) in cases under section 21167, extensions are limited to one 30-
40 day extension for the opening brief and one 30-day extension for “preparation of responding brief.”
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¹ Please note that in a separate invitation to comment regarding the number of copies documents that must be filed the committee is proposing other changes to rule 8.212.

1 Under rule 8.42, the original signature of only one party is required on the stipulation filed with the court;
2 the signatures of the other parties may be in the form of copies of the signed signature page of the
3 document.

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5 Subdivision (b)(2) clarifies that a party seeking an extension of time from the presiding justice must
6 proceed by application under rule 8.50 rather than by motion under rule 8.54.

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8 **Subdivision (c). *****

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