

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SPR15-02**

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**Title**

Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

**Action Requested**

Review and submit comments by June 17, 2015

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rules 2.251 and 8.71

**Proposed Effective Date**

January 1, 2016

**Proposed by**

Appellate Advisory Committee  
Hon. Raymond J. Ikola, Chair  
Court Technology Advisory Committee  
Hon. Terence L. Bruiniers, Chair

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### Executive Summary and Origin

The Appellate Advisory Committee and the Court Technology Advisory Committee propose to amend rules 2.251 and 8.71 of the California Rules of Court to authorize electronic service on consenting courts. There is some ambiguity in the rules regarding whether electronic service is authorized not only by, but also on, a court. The proposal would add language to clarify that electronic service on a court is permissible under the rules. It originated from the court executive officer of a superior court.

### Background

Several California Rules of Court require that certain documents be served on the superior court. For example, rule 8.212(c)(1) requires that one copy of each brief in a civil appeal be served on the superior court clerk for delivery to the trial judge. Similar language also appears in rule 8.360 (briefs in felony appeals), rule 8.412 (briefs in juvenile appeals), and rule 8.630 (briefs in capital appeals). Rules 8.500 and 8.508, governing petitions for review filed in the Supreme Court, similarly require that copies of the petition be served on both the superior court and the Court of Appeal.

There is some ambiguity as to whether the current rules authorize electronic service on a court. Rule 8.25(a), which generally addresses service of documents in appellate proceedings, requires that the parties serve documents “by any method permitted by the Code of Civil Procedure.”

*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 These proposals are circulated for comment purposes only.*

Code of Civil Procedure section 1010.6 (electronic service and filing in the trial courts), rule 2.250 (electronic service in the trial courts), and rule 8.70 (electronic filing and service in the appellate courts) all define “electronic service” as service of a document “*on a party or other person*” (italics added); they do not expressly provide for service on a court.

Arguably, the term “other person” in these provisions could be interpreted to encompass courts. Rule 1.6(14) offers some support for this interpretation because it defines the term “person” as including “a corporation *or other legal entity* as well as a natural person.” (Italics added.)

Nevertheless, Code of Civil Procedure section 1010.6 and rules 2.251 and 8.71 specifically address electronic service *by* a court without mentioning service *on* a court. This absence could be interpreted as indicating that the rules now only contemplate service by a court and do not contemplate service on a court.

### **The Proposal**

This proposal would eliminate the ambiguity in the rules by expressly authorizing electronic service on a trial and appellate court with that court’s consent. Electronic service may benefit the courts by improving efficiency because the clerk could forward the electronic copies to the trial judge by e-mail. It would also be more efficient for the parties in many cases.

### **Electronic service authorized on consenting courts**

The amendment would add a new paragraph (2) to rules 2.251(j) and 8.71(g), which currently address electronic service by a court. The initial paragraph of these new subdivisions is modeled on the language of current rules 2.251(e)(2) and 8.71(c)(2), which provide that a document may not be served on a nonparty unless that nonparty consents or electronic service is otherwise provided for by law or court order. The draft of new 2.251(j)(2) and 8.71(g)(2) would similarly prohibit electronic service on a court without the court’s consent unless such service is provided for by law or court order.

Subparagraphs (A) and (B) of rules 2.251(j)(2) and 8.71(g)(2) would specify how a court indicates its agreement to accept electronic service. Subparagraph (A) is modeled on 2.251(b)(1)(A) and 8.71(a)(2)(A), which provide that a party may indicate that it agrees to accept electronic service by serving a notice on all parties. New 2.251(j)(2)(A) and 8.71(g)(2)(A) would similarly provide that a court may indicate that it agrees to accept electronic service by serving a notice on all the parties. Subparagraph (B) would provide that the court may also indicate its agreement to accept electronic service by adopting a local rule stating so.

### **Nonsubstantive amendments to rule 8.71**

Additional amendments to rule 8.71(a) and (c) have been proposed. These nonsubstantive amendments make this rule more consistent with the language of trial court rule 2.251 and consolidate provisions relating to the authorization for electronic service in the appellate courts. The amendments would clarify that a document may be electronically served on a party or other person if electronic service is provided for by law or court order or if the party or person

consents to this service. The amendments would also move the provision regarding service on a nonparty from subdivision (c) to subdivision (a).

### **Alternatives Considered**

The committees considered not recommending any amendments to the rules. The rules may be interpreted to allow for electronic service on a court. The committees did not elect this alternative, however, because the rules are ambiguous and it may not be clear to all parties that courts can accept electronic service. The amendments to the rule would also clarify how a party may consent to electronic service.

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

Under this proposed rule, implementation of electronic service on a court would generally be voluntary; each court would determine whether to consent to electronic service. For those courts that chose to implement such service, the rule would require the court either to adopt a local rule or to provide notice in individual cases. These courts would also have to establish and monitor an e-mail account to receive documents served by the parties on the court. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh these implementation costs. Potential efficiencies for the courts include being able to forward copies of briefs by e-mail to judges. The proposed amendment might also provide cost-savings for the parties because they would not have to pay the costs incurred by physical filing, including any copying, transportation, and mailing expenses.

## **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?

The advisory committees also seek comments from *courts* on the following cost and implementation matter:

- Would the proposal provide cost savings? If so please quantify.

### **Attachments**

1. Cal. Rules of Court, rules 2.251 and 8.71, at pages 4–6

Rule 2.251 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 2.251. Electronic service**

2

3 (a)–(i) \* \* \*

4

5 (j) **Electronic service by or on court**

6

7 (1) The court may electronically serve any notice, order, judgment, or other  
8 document issued by the court in the same manner that parties may serve  
9 documents by electronic service.

10

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

14

15 (A) Serving a notice on all parties that the court accepts electronic service.  
16 The notice must include the electronic service address at which the  
17 court agrees to accept service; or

18

19 (B) Adopting a local rule stating that the court accepts electronic service.  
20 The rule must indicate where to obtain the electronic service address at  
21 which the court agrees to accept service.

Rule 8.71 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 8.71. Electronic service**

2  
3 **(a) Consent to Authorization for electronic service**

4  
5 (1) A document may be electronically served under these rules:

6  
7 (A) If electronic service is provided for by law or court order; or

8  
9 (B) If the recipient agrees to accept electronic services as provided by these  
10 rules and the ~~When a document may be~~ is otherwise authorized to be  
11 served by mail, express mail, overnight delivery, or fax transmission,  
12 ~~electronic service of the document is permitted when authorized by~~  
13 ~~these rules.~~

14  
15 (2)–(3) \* \* \*

16  
17 (4) A document may be electronically served on a nonparty if the nonparty  
18 consents to electronic service or electronic service is otherwise provided for  
19 by law or court order.

20  
21 **(b) Maintenance of electronic service lists**

22  
23 When the court orders or permits electronic filing in a case, it must maintain and  
24 make available electronically to the parties an electronic service list that contains  
25 the parties' current electronic service addresses, as provided by the parties that have  
26 filed electronically in the case.

27  
28 **(c) Service by the parties**

29  
30 (1)—Notwithstanding (b), parties are responsible for electronic service on all other  
31 parties in the case. A party may serve documents electronically directly, by  
32 an agent, or through a designated electronic filing service provider.

33  
34 (2)—~~A document may not be electronically served on a nonparty unless the~~  
35 ~~nonparty consents to electronic service or electronic service is otherwise~~  
36 ~~provided for by law or court order.~~

37  
38 **(d)–(f) \* \* \***

39  
40 **(g) Electronic service by or on court**

41  
42 (1) The court may electronically serve any notice, order, opinion, or other  
43 document issued by the court in the same manner that parties may serve  
44 documents by electronic service.

- 1           (2) A document may be electronically served on a court if the court consents to  
2 electronic service or electronic service is otherwise provided for by law or  
3 court order. A court indicates that it agrees to accept electronic service by:  
4  
5           (A) Serving a notice on all parties that the court accepts electronic service.  
6           The notice must include the electronic service address at which the  
7           court agrees to accept service; or  
8  
9           (B) Adopting a local rule stating that the court accepts electronic service.  
10           The rule must indicate where to obtain the electronic service address at  
11           which the court agrees to accept service.