

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**W14-11**

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Title	Action Requested
Juvenile Law: Electronic Filing	Review and submit comments by January 24, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.522	July 1, 2014
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Melissa Ardaiz, Attorney
Hon. Kimberly J. Nystrom-Geist, Cochair	<a href="mailto:melissa.ardaiz@jud.ca.gov">melissa.ardaiz@jud.ca.gov</a>
Hon. Jerilyn L. Borack, Cochair	916-643-8002

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### **Executive Summary and Origin**

The Family and Juvenile Law Advisory Committee proposes revising rule 5.522 of the California Rules of Court (Fax filing) to include a provision that allows for the electronic filing of documents in juvenile dependency and delinquency court proceedings, consistent with rule 2.252 et seq. and section 1010.6 of the Code of Civil Procedure. This proposal originated from the Trial Court Presiding Judges and the Court Executives Advisory Committees, who requested that the Family and Juvenile Law Advisory Committee consider electronic filing in juvenile proceedings as a means of improving court efficiency, achieving costs savings, and incorporating modern technology. It is consistent with a recent proposal, approved by the Judicial Council, to amend the statewide rules related to electronic filing and service. The committee also proposes changing the title of rule 5.522 from “Fax filing” to “Remote filing”—because the rule would incorporate provisions related to both fax and electronic filing in juvenile court proceedings—and making various structural and technical changes to the fax portions of the rule.

### **Background**

In 2012–2013, the Trial Court Presiding Judges and the Court Executives Advisory Committees suggested adopting a new rule of court or amending the current rules to authorize the electronic filing of documents in juvenile court proceedings to improve court efficiency and achieve cost savings. Such authorization in juvenile dependency and delinquency court proceedings is consistent with Code of Civil Procedure section 1010.6 and the recently amended statewide trial court rules.

*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.*

## **Legal framework**

The enactment of Assembly Bill 2073 (Silva; Stats. 2012, ch. 320) changed the legal framework for electronic filing and service.<sup>1</sup> The legislation amended Code of Civil Procedure section 1010.6—which governs electronic filing and service—and required the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service of documents in “specified civil actions” on or before July 1, 2014. These “specified civil actions” were not identified.

The Court Technology and the Civil and Small Claims Advisory Committees, with the assistance of the AB 2073 Mandatory E-Filing Working Group, developed rule amendments to implement the legislative directive in AB 2073. A proposal was circulated in the 2013 winter cycle. The Judicial Council considered this proposal and, effective July 1, 2013, amended rules 2.250–2.254, 2.256, 2.258, and 2.259 of Title 2, Trial Court Rules.<sup>2</sup>

These trial court rules now allow a superior court to determine whether and how to institute mandatory electronic filing and service in civil cases, subject to the conditions in Code of Civil Procedure section 1010.6, statewide rules, and various conditions. (See rule 2.253(b).) In addition, a court may allow parties to voluntarily file documents electronically not only in civil cases but “in any types of cases.” (See rule 2.253(a).) Additional rule amendments were made for purposes of clarity and consistency.

## **Scope of mandatory electronic filing**

AB 2073 gave the Judicial Council broad leeway in determining the types and categories of “specified civil actions” that are appropriate for mandatory electronic filing. During the public comment period for this proposal, specific comment was sought on what types and categories of civil cases are appropriate for mandatory electronic filing, and whether juvenile cases should be excluded. After public comment, the committees recommended—and the Judicial Council approved—eliminating the proposed exclusion of juvenile cases and authorizing the broadest range of civil cases for mandatory electronic filing, subject to individual court discretion. Therefore, each court may implement electronic filing in a practical, incremental way depending on the needs and resources of the courts and the public they serve.

As stated in the Advisory Committee Comment regarding rule 2.253(b)(1):

This subdivision allows courts to institute mandatory electronic filing and service in any type of civil case for which the court determines that mandatory electronic filing is appropriate. The scope of this authorization is meant to be broad. It will enable courts to implement mandatory electronic filing in a flexible yet expansive

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<sup>1</sup> The text of AB 2073 is available at [www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_2051-2100/ab\\_2073\\_bill\\_20120914\\_chaptered.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2051-2100/ab_2073_bill_20120914_chaptered.html).

<sup>2</sup> The Judicial Council report titled *Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service in Civil Cases* is available at [www.courts.ca.gov/documents/jc-20130628-itemC.pdf](http://www.courts.ca.gov/documents/jc-20130628-itemC.pdf). This proposal was approved by the council at its meeting on June 28, 2013, and became effective on July 1, 2013.

manner. However, in initiating mandatory electronic filing, courts should take into account the fact that some civil case types may be easier and more cost-effective to implement at the outset while other types may require special procedures or other considerations (such as the need to preserve the confidentiality of filed records) that may make them less appropriate for inclusion in initial mandatory e-filing efforts.

(Cal. Rules of Court, rule 2.253, Advisory Committee Comment.)

### **Applicability in juvenile court proceedings**

Rule 2.2 states that “[t]he Trial Court Rules apply to all cases in the superior courts unless otherwise specified by a rule or statute.”

With respect to permissive electronic filing, rule 2.253(a) states that “[a] court may permit parties by local rule to file documents electronically in any types of cases . . . subject to the conditions in Code of Civil Procedure section 1010.6 and the rules in this chapter.”

With respect to mandatory electronic filing, rule 2.253(b) states that “[a] court may require parties by local rule to electronically file documents in civil actions . . . subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter, and [the conditions listed in rule 2.253(b)(1)].” The Advisory Committee Comment concerning this subdivision provides guidance to courts in determining which types and categories of civil cases may be appropriate for authorizing mandatory electronic filing; however, it does not provide a clear record for juvenile courts. The Family and Juvenile Law Advisory Committee believes that to clarify the applicability of the statewide rules regarding electronic filing in juvenile dependency and delinquency court proceedings would be helpful. This proposal relates to electronic filing only; it does not include or incorporate provisions relating to electronic service.

### **The Proposal**

Given this new legal framework, the Family and Juvenile Law Advisory Committee recommends the following amendments to rule 5.522 (Fax filing):

- Change the title of the rule from “Fax filing” to “Remote filing,” and include provisions that apply to both fax and electronic filing (new) in juvenile court proceedings;
- Revise subdivision (a)(2) to update the fax filing terminology and to clarify that a modern fax machine may include an electronic device capable of receiving a fax transmission, as defined in rule 2.301;
- Add a new subdivision (b), “Electronic filing,” that:
  - Allows for the electronic filing of documents in juvenile dependency and delinquency court proceedings, as provided under and consistent with rule 2.252 et seq.; and

- Clarifies that electronic filing must be provided in a manner that preserves the confidentiality of records.
- Eliminate the current language in subdivision (a)(1) and throughout rule 5.522 that allows fax filing by “written instruction” and allow courts to permit fax and/or electronic filing by “local rule” only;
- Revise current subdivision (g)(1) and (g)(2) (new subdivision (c)(6)(A)) to allow for greater flexibility in the protocol for securing the confidentiality of the documents subject to fax filing; and
- Include structural and technical revisions to the fax portions of the rule. Rule 5.522 was adopted by the Judicial Council, effective January 1, 1999. No substantive changes have been made to the rule since that time.

Title 2, Trial Court Rules; Division 3, Filing and Service; Chapter 2, Filing and Service by Electronic Means include the following statewide rules on electronic filing:

- Rule 2.252. General rules on electronic filing of documents
- Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic filing by court order
- Rule 2.254. Responsibilities of court
- Rule 2.255. Contracts with electronic filing service providers
- Rule 2.256. Responsibilities of electronic filer
- Rule 2.257. Requirements for signatures on documents
- Rule 2.258. Payment of filing fees
- Rule 2.259. Actions by court on receipt of electronic filing
- Rule 2.261. Authorization for courts to continue modifying forms for the purpose of electronic filing and forms generation

These rules provide a uniform framework for implementing electronic filing if a court determines that it is appropriate to allow for the electronic filing of documents in juvenile dependency and/or delinquency court proceedings. The committee proposes adding a reference to these rules rather than proposing new, detailed rules specific to juvenile court proceedings; however, the committee requests specific comment on this approach. Questions are included in the “Request for Specific Comments” box.

### **Alternatives Considered**

The Family and Juvenile Law Advisory Committee considered taking no action to amend rule 5.522. The substantive content related to electronic filing is already included in the statewide trial court rules. However, the committee believes that it is important to include a provision in rule 5.522 to clarify that these rules apply with respect to juvenile dependency and/or delinquency court proceedings, subject to individual court discretion.

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

This proposal will have an impact on court operations and costs if a court decides to implement the electronic filing framework in juvenile dependency and/or delinquency court proceedings. Implementation is subject to court discretion and local court rule. This is a modern approach, and as such, what the implementation costs and/or operational impacts will be remains unclear. They will likely vary from court to court. It is probable that implementation of electronic filing will have a largely positive impact, resulting in cost savings, improved court efficiency, and greater court user satisfaction. As stated above, in initiating mandatory electronic filing, courts should note that some civil case types may be relatively easy and cost-effective to implement whereas other types may require special procedures or other considerations that make them less appropriate for mandatory electronic filing.

## 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?

### *Electronic filing*

- *Scope*: Are there any electronic filing provisions in rule 2.252 et seq. that pose concern if applied in juvenile dependency and/or delinquency court proceedings? If so, which provisions (for electronic filing service providers, see below)? Should these provisions be specifically excluded from applying in the context of juvenile court proceedings?
- *Confidentiality*: Proposed subdivision (b)(3) states that “[e]lectronic filing must be provided in a manner that preserves the confidentiality of records.”
  - Is this language sufficient to address protection of confidentiality for juvenile court documents that are electronically filed?
  - Should the rule specifically refer to the need to have juvenile records that are transmitted electronically encrypted or sent by some other secure method?
  - Are there other nontechnological issues relating to the preservation of confidentiality of juvenile records transmitted electronically that need to be addressed in the rule?
- *Electronic filing service providers*: The trial court rules allow for direct and indirect electronic filing. Rule 2.252(b) states that “a court may provide for the electronic filing of documents directly with the court, indirectly through one or more approved electronic filing service providers, or through a combination of direct and indirect means.” Rule 2.255 governs contracts with electronic filing service providers. Electronic filing service providers bring a third party into the process. As currently proposed, rule 5.522 would incorporate these provisions as applicable in juvenile dependency and delinquency court proceedings.
  - Do you have any concerns with this approach?
  - Should rule 5.522 include language to clarify the use of electronic filing service providers in juvenile court proceedings and address preservation of confidentiality?
  - Should rule 5.522 specifically exclude the provisions related to electronic filing service providers from applying in juvenile court proceedings?

### *Fax filing*

- *“Written instruction”*: Current rule 5.522(a) allows a court to permit fax filing “by local rule or other written instruction.” To be consistent with the trial court rules, this proposal eliminates the “written instruction” option and limits both fax and electronic filing to “local rule.”
  - How would this proposed change affect your court?

- Has your court permitted fax filing by “written instruction”?
- Are you in favor of limiting fax filing to local rule or do you think that rule 5.522 should continue to allow courts to permit fax filing by either “local rule or other written instruction?”
- *Separate fax machine/confidentiality*: To secure the confidentiality of documents filed by fax, current rule 5.522 requires the clerk’s office to have a separate fax machine dedicated solely to the receipt of juvenile court documents that may be filed by fax.
  - This is an ongoing cost. Proposed subdivision (c)(6)(A) includes revised language aimed at providing flexibility by expanding this subdivision to include a fax machine that is set up with a protocol to preserve confidentiality. Do you have any concerns about or objections to this approach?
- *General*: Rule 5.522 (*Fax filing*) was adopted by the Judicial Council, effective January 1, 1999. No substantive changes have been made to this rule since that time. Do you have any concerns or suggested changes regarding the current fax provisions?

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?

### Attachments and Links

1. Cal. Rules of Court, rule 5.522, at pages 8–10
2. Rule 2.252: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_252](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_252)
3. Rule 2.253: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_253](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_253)
4. Rule 2.254: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_254](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_254)
5. Rule 2.255: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_255](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_255)
6. Rule 2.256: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_256](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_256)
7. Rule 2.257: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_257](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_257)
8. Rule 2.258: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_258](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_258)
9. Rule 2.259: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_259](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_259)
10. Rule 2.261: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_261](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_261)

Rule 5.522 of the California Rules of Court would be amended effective July 1, 2014, to read:

1 **Rule 5.522. ~~Fax~~Remote filing**

2  
3 **(a) Applicability**

- 4  
5 (1) This rule applies to juvenile court proceedings in courts that permit fax or  
6 electronic filing by local rule or other written instruction.  
7  
8 (2) As used in this rule, “fax,” “faecsimile transmission” or “fax transmission,”  
9 “faecsimile machine” or “fax machine,” “faecsimile filing” or and “fax filing”  
10 and “fax” are defined in rule 2.301. A fax machine includes an electronic  
11 device capable of receiving a fax transmission, as defined in rule 2.301.  
12  
13 (3) As used in this rule, “electronic filing” is defined in rule 2.250. Rule 2.250  
14 also defines other terms related to electronic filing, such as “document,”  
15 “electronic filer,” “electronic filing service provider,” “regular filing hours,”  
16 and “close of business.”  
17

18 **(b) Electronic filing**

- 19  
20 (1) A court may allow for the electronic filing of documents in juvenile  
21 dependency and delinquency court proceedings, as provided under and  
22 consistent with rule 2.252 et seq.  
23  
24 (2) This rule does not incorporate the electronic service provisions in rule 2.252  
25 et seq.  
26  
27 (3) Electronic filing must be provided in a manner that preserves the  
28 confidentiality of records.  
29

30 ~~**(b) Juvenile court documents that may be filed by fax**~~

31  
32 **(c) Fax filing**

- 33  
34 (1) Juvenile court documents that may be filed by fax

35  
36 The following documents may be filed in juvenile court by the use of a fax  
37 machine: petitions filed under sections 300, 601, 602, 342, 387, 388, 777, and  
38 778. Other documents may be filed by the use of a fax machine if permitted  
39 by the local rule, as described or other written instruction specified in (a).  
40

1 ~~(e) — Persons and agencies that may file by fax~~

2  
3 (2) Persons and agencies that may file by fax

4  
5 Only the following persons and agencies may file documents by the use of a  
6 fax machine, as stated in (b)(c)(1): any named party to the proceeding; any  
7 attorney of record in the proceeding; the county welfare department; the  
8 probation department; the office of the district attorney; the office of the  
9 county counsel; a CASA volunteer appointed in the case.

10  
11 (A) Any named party to the proceeding;

12  
13 (B) Any attorney of record in the proceeding;

14  
15 (C) The county welfare department;

16  
17 (D) The probation department;

18  
19 (E) The office of the district attorney;

20  
21 (F) The office of the county counsel; and

22  
23 (G) A Court Appointed Special Advocate (CASA) volunteer appointed in  
24 the case.

25  
26 ~~(d) — Procedures for fax filing~~

27  
28 (3) Procedures for fax filing

29  
30 A party or agency described in (c)(2) may file by fax directly to any juvenile  
31 court that has provided for fax filing by local rule ~~or other written instruction~~.  
32 The local rule ~~or written instruction~~ must provide the fax telephone number  
33 or numbers for filings and the business hours during which fax filings will be  
34 accepted.

35  
36 ~~(e) — Mandatory cover sheet~~

37  
38 (4) Mandatory cover sheet

39  
40 A fax filing must be accompanied by Fax Filing Cover Sheet (form JV-520).  
41 The cover sheet must be the first page transferred. The court is not required to  
42 retain or file a copy of the cover sheet.

1 ~~(f)~~ Signatures

2  
3 (5) Signatures

4  
5 Notwithstanding any provision of law to the contrary, a signature produced  
6 by fax transmission is an original signature.

7  
8 ~~(g)~~ Confidentiality requirements

9  
10 (6) Confidentiality requirements

11  
12 In order to secure the confidentiality of the documents subject to filing by  
13 fax, the following procedures are required:

14  
15 ~~(1)(A)~~ The In each clerk's office designated to receive such documents  
16 must have either a separate fax machine must be provided and  
17 dedicated solely to the receipt of the documents described in ~~(b)~~(c)(1)  
18 or a fax machine that is set up with a protocol to preserve the  
19 confidentiality of the documents described in (c)(1); and

20  
21 ~~(2)~~ The telephone number to be used for these filings must be made  
22 available only to those persons and agencies described in (c); and

23  
24 ~~(3)(B)~~ Any document received for fax filing must be filed or submitted  
25 to the court immediately on receipt and must not be placed or stored  
26 where anyone not entitled to access may examine it.

27