



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
August 28, 2017	Please read before DATE JATS conference call
To	Deadline
Members of the Joint Appellate Technology Subcommittee	DATE , 2017
From	Contact
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Subject	
Review of new and pending suggestions for technology-related potential projects	

Introduction

As we indicated in the e-mail to you about setting the subcommittee meeting, the main purpose of this meeting is to assist the Appellate Advisory Committee in preparing its proposed annual agenda for the 2017-2018 committee year (November 2017-October 2018). The subcommittee does this by reviewing technology-related suggestions received by the committee for changes to the appellate rules and other projects, and making recommendations to the committee about which of those suggestions should be considered/potentially worked on by the committee this year and their prioritization. The Appellate Advisory Committee will consider these recommendations at its September 11 meeting. The proposed annual agenda for the committee will then be submitted to the Judicial Council's Rules and Project Committee (RUPRO) – the internal Judicial Council committee with oversight responsibility for the Appellate Advisory Committee – in late October for approval of the items the committee may work on for the 2017-2018 committee year.

Suggestions and Prioritization

Attached for your review is a list of items for the subcommittee to consider recommending for possible inclusion in the proposed annual agenda, including:

- Suggestions that remain pending from the committee's 2016-2017 annual agenda; and
- New suggestions received by the committee to date this year.

If you have additional suggestions for committee projects, please send those to the subcommittee chair, Justice Mauro, and to me before the subcommittee meeting and we will distribute them to the subcommittee members.

For the past several years, the committee's projects have been limited in light of the economic crisis in the courts. These limits reflect concerns both about the economic impact on courts of any proposed modification of a rule or form and about the economic burden on the courts of reviewing and responding to proposals for modifications to rules and forms. In light of these concerns, RUPRO has established the following criteria for advisory committees to consider in determining whether a rule or form proposal is a high priority – priority 1 – and should be developed within the same committee year (for this year, these would be rules and form changes proposed for circulation in spring 2018 to be effective January 1, 2019):

- The proposal is urgently needed to conform to the law;
- The proposal is urgently needed to respond to a recent change in the law;
- A statute or council decision requires the adoption or amendment of rules or forms by a specified date;
- The proposal will provide significant cost savings and efficiencies, generate significant revenue, or avoid a significant loss of revenue;
- The change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; or
- The proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk.

Committees can ask to work on other rule and form proposals within their subject matter areas that do not meet the criteria for priority 1 projects. The criteria for such projects – priority 2 projects – are:

- The proposal is useful, but not necessary, to implement statutory changes; or
- The proposal is helpful in otherwise advancing Judicial Council goals and objectives.

Proposals with priority level 2 are generally considered for circulation the second year after they are approved for inclusion on a committee's annual agenda – so any new priority 2 proposals included on this year's annual agenda would be developed for potential circulation in the spring of 2019 to be effective January 1, 2020. RUPRO has cautioned that committees should expect that new priority 2 proposals may not be approved for the current year due to the ongoing fiscal situation affecting the judicial branch.

In applying RUPRO's criteria for prioritizing rule and form suggestions, it is often important to consider the following:

- Is the problem/issue identified in a suggestion something that arises frequently or infrequently?
- If the proponent suggests that there would be savings in time or money for the courts, what is the likely amount of such savings?
- Are there likely to be costs for the trial courts, appellate courts, or litigants associated with implementing a suggestion?

Often, additional information about these issues helps the subcommittee/committee assess the need for and priority of a particular suggestion. To this end, ***you are encouraged to seek information about these issues from those with whom you work that may have experience in the areas raised in the suggestions.***

Joint Appellate Technology Subcommittee Task

The subcommittee's task is to review the suggestions in the attached list and to recommend to the full committee which of them should be:

- Included in the draft annual agenda as priority 1 proposals (urgent proposals with a proposed January 1, 2019 effective date);
- Included in the draft annual agenda as priority 2 proposal (non-urgent proposals that the committee would like to work on this year or next year);
- Not included in the draft annual agenda, but deferred for possible future consideration;
- Referred to a different subcommittee or another judicial council body; or
- Not pursued at all.

POTENTIAL JATS PROJECTS FOR 2017-2018

Current Projects

Here are the priority 2 projects listed on 2016-2017 Annual Agenda:

1. Modernize Appellate Court Rules for E-Filing and E-Business

- a. Review appellate rules to ensure consistency with e-filing practice; evaluate, identify and prioritize potential rule modifications where outdated policy challenges or prevents e-business.
- b. Consider rule modifications to remove requirements for paper versions of documents (by amending individual rules or by introducing a broad exception for e-filing/e-service).
- c. Consider potential amendments to rules governing online access to court records for parties, their attorneys, local justice partners, and other government agencies.

Here are some of the specific rule projects that were contemplated as falling within this annual agenda item:

- *Formatting of electronic reporters' transcripts:* This project is underway. A proposal based on a suggestion from the California Court Reporters' Association, was circulated for public comment this spring. The committee review of the public comments is awaiting action on related pending legislation, AB 1450.
- *Rule amendments re access:* This project is underway. An initial draft of possible amendments to address online access to trial court records for parties, their attorneys, local justice partners, and other government agencies. The plan is for JATS to review what is ultimately proposed at the trial court level and use that as a base for developing a companion proposal for access to appellate court records.
- *Bookmarking:* This project has not been started. The 2016 trial court rules modernization changes include a new requirement, added to rule 3.1110(f), that electronic exhibits be electronically bookmarked. (It requires that electronic exhibits "include electronic bookmarks with links to the first page of each exhibit and with book mark titles that identify the exhibit number or letter and briefly describe the exhibit.") This issue was set aside by JATS for 2016, to give those courts new to e-filing (or not yet on e-filing) a chance to gain some experience with e-filing before participating in a decision as to what to require.
- *Exhibits:* This project has not been started. Creating a requirement that exhibits submitted in electronic form be submitted in electronic volumes, rather than individually (previously considered, in connection with consideration of bookmarking requirements). This was suggested in a comment by D'vora Tirschwell, a writ attorney at the First District, commenting on the 2016 appellate e-filing rules proposal.

- *Sealed & Confidential Material*: This project has not been started. Rules for the handling of sealed or confidential materials that are submitted electronically (previously considered). This was also set aside by JATS in 2016.
- *Return of lodged electronic records*: This project has not been started. The trial court rule modernization changes made in 2016 amend rules 2.551(b) and 2.577(d)(4) to give the moving party ten days after a motion to seal is denied to notify the court if the party wants the record to be filed unsealed. If the clerk does not receive notification in ten days, the clerk must return the record, if lodged in paper form, or permanently delete it if lodged in electronic form. Rule 3.1302 is amended to allow the court to maintain other lodged materials – and if the court chooses not to do so, to require that they be returned, if on paper, or permanently deleted, if electronic, with a notice of the destruction sent to the party before destruction of the electronic record.

2. Branch and Model Court Privacy Policies on Electronic Court Records and Access in the Appellate Courts

- (a) Develop a comprehensive statewide privacy policy addressing electronic access to appellate court records and data to align with both state and federal requirements.
- (b) Develop a model appellate court privacy policy, outlining the key contents and provisions to address within each court’s specific policy.

This project is underway. Staff are preparing an initial draft of the policy for consideration by JATS.

Here are other projects identified last year:

- ITAC is looking at rules to govern certification of electronic records, standards for electronic signatures, and whether parties should have to submit paper copies of documents when filing electronically. (In the trial courts, some changes will require legislation, as there are statutory requirements for the trial courts regarding electronic filing, service and signatures. See Code of Civil Procedure section 1010.6.) As these changes move forward for the trial courts, JATS may wish to offer input on changes that will affect the appellate courts. This again is an area where JATS’s work must wait until the project is moved forward by ITAC. In addition, this project may eventually result in rules work to be done by JATS. In future years, after ITAC has resolved these issues for the trial courts, JATS may wish to consider proposing changes to the appellate court rules on these issues.
- Providing input on implementation of a new document management system in the appellate courts

New Suggestions

Consider a fix for link rot

Suggestion: Link rot refers to broken hyperlinks. In May 2017, Reporter of Decisions Lawrence Striley briefed the appellate court librarians on the in-house solution developed by the Supreme Court. It will be administered by the Reporter's office, and will be rolled out later this year. Mr. Striley will share what they have done, but this solution will not be available to appellate courts; they would have to get a server and implement it themselves. One option for appellate courts is perma.cc, which was developed by Harvard's Law Library, is sponsored by a group of law libraries around the U.S., and is free. Mr. Striley indicated that this was his second choice, but the in-house solution worked better for the Supreme Court. The suggestion is to address this issue for the appellate courts.

Source: Holly Lakatos, appellate court librarian, 3DCA

ImageSoft/TrueFiling

ImageSoft is the e-service provider for the Supreme Court. E-filers have experienced issues using the service. The subcommittee will consider the issues and whether action is required.