



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

January 21, 2016

Action Requested

Please review before January 26 meeting

To

ITAC's Rules and Policy Subcommittee and
CSCAC's Unlimited Case and Complex
Litigation Subcommittee

Deadline

January 26, 2016

From

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Contact

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Subject

Phase II of the Rules Modernization Project:
proposed rule amendments to titles 2 and 3

Recognizing that courts are swiftly proceeding to a paperless world, the Information Technology Advisory Committee ("ITAC") is leading the Rules Modernization Project, a multi-year effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC is coordinating with six other advisory committees, including the Civil and Small Claims Advisory Committee ("CSCAC"), with relevant subject-matter expertise.

The Rules Modernization Project is being carried out in two phases. Last year, ITAC, CSCAC, and the other advisory committees completed phase I—an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing e-filing and e-service and with e-business practices in general. This year, ITAC, CSCAC, and the other advisory committees are undertaking phase II, which involves a more in-depth examination of any statutes and rules that may hinder e-business practices.

Attached to this memorandum are proposed amendments to the rules in titles II and III. The proposal includes possible electronic formatting rules, as well as proposed amendments to the various rules identified by the subcommittees during phase I as requiring a substantive change.

Subcommittees' Task

The subcommittees are tasked with reviewing the draft rule amendments and:

- Asking staff or group members for further information and analysis;
- Advising ITAC and CSCAC to recommend that all or part of the proposal be circulated for public comment during the spring rules cycle; or
- Rejecting the proposal.

Attachment

1. Draft amendments to titles 2 and 3 with explanatory drafter's notes

The California Rules of Court would be amended, effective January 1, 2017, to read as follows:

1 **Title 2. Trial Court Rules**

2
3 **Division 1. General Provisions**

4
5 **Chapter 1. Title and Applications**

6
7 **Rule 2.1. Title**

8
9 The rules in this title may be referred to as the Trial Court Rules.

10
11 **Rule 2.2. Application**

12
13 The Trial Court Rules apply to all cases in the superior courts unless otherwise specified
14 by a rule or statute.

15
16 **Chapter 2. Definitions and Scope of Rules**

17
18 **Rule 2.3. Definitions**

19
20 As used in the Trial Court Rules, unless the context or subject matter otherwise requires:

- 21
22 (1) "Court" means the superior court.
23
24 (2) "Papers" includes all documents, except exhibits and copies of exhibits, that are
25 offered for filing in any case, but does not include Judicial Council and local court
26 forms, records on appeal in limited civil cases, or briefs filed in appellate divisions.
27 Unless the context clearly provides otherwise, "papers" need not be in a tangible or
28 physical form but may be in an electronic form.
29
30 (3) "Written," "writing," "typewritten," and "typewriting" include other methods of
31 printing letters and words equivalent in legibility to typewriting or printing from a
32 word processor.

33
34 **Division 2. Papers and Forms to Be Filed**

35
36 **Chapter 1. Papers**

37
38 **Rule 2.100. Form and format of papers presented for filing in the trial courts**

39
40 **(a) Preemption of local rules**

1 The Judicial Council has preempted local rules relating to the form and format of
2 papers to be filed in the trial courts. No trial court, or any division or branch of a
3 trial court, may enact or enforce any local rule concerning the form or format of
4 papers.
5

6 **(b) Rules prescribe form and format**
7

8 The rules in this chapter prescribe the form and format of papers to be filed in the
9 trial courts.
10

11 **Rule 2.101. ~~[Repealed]~~ Electronic format of papers**
12

13 Papers that are submitted or filed electronically must meet the requirements in rule
14 2.256(b).
15

16 **DRAFTER'S NOTE: During phase 1 of the Rules Modernization Project, CSCAC and*
17 *ITAC decided to wait until phase 2 to recommend substantive changes to the rules,*
18 *including any changes to the rules on electronic formatting. Rule 2.256(b) (below) states*
19 *the current formatting requirements for e-filed documents. Staff recommends adding*
20 *references to rule 2.256(b) here and to rules 2.114 and 3.1110 below. Retaining the*
21 *provisions governing electronic formatting in rule 2.256(b) would make it easier to*
22 *implement any future changes to electronic formatting requirements.*
23

24 **Rule 2.102. One-sided paper**
25

26 When papers are not filed electronically, only one side of each page may be used.
27

28 **Rule 2.103. Size, quality, and color of papers**
29

30 All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on
31 opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound
32 weight.
33

34 **Rule 2.104. ~~Printing;~~ Font size; printing**
35

36 Unless otherwise specified in these rules, all papers filed must be prepared using a font
37 size not smaller than 12 points. All papers not filed electronically must be printed or
38 typewritten or be prepared by a photocopying or other duplication process that will
39 produce clear and permanent copies equally as legible as printing ~~in a font not smaller~~
40 ~~than 12 points.~~
41
42

1 **Rule 2.105. Font style**

2
3 The font style must be essentially equivalent to Courier, Times New Roman, or Arial.

4
5 **Rule 2.106. Font color**

6
7 The font color must be black or blue-black.

8
9 **Rule 2.107. Margins**

10
11 The left margin of each page must be at least one inch from the left edge and the right
12 margin at least 1/2 inch from the right edge.

13
14 **Rule 2.108. Spacing and numbering of lines**

15
16 The spacing and numbering of lines on a page must be as follows:

- 17
18 (1) The lines on each page must be one and one-half spaced or double-spaced and
19 numbered consecutively.
20
21 (2) Descriptions of real property may be single-spaced.
22
23 (3) Footnotes, quotations, and printed forms of corporate surety bonds and
24 undertakings may be single-spaced and have unnumbered lines if they comply
25 generally with the space requirements of rule 2.111.
26
27 (4) Line numbers must be placed at the left margin and separated from the text by a
28 vertical column of space at least 1/5 inch wide or a single or double vertical line.
29 Each line number must be aligned with a line of type, or the line numbers must be
30 evenly spaced vertically on the page. Line numbers must be consecutively
31 numbered, beginning with the number 1 on each page. There must be at least three
32 line numbers for every vertical inch on the page.
33

34 **Rule 2.109. Page numbering**

35
36 Each page must be numbered consecutively at the bottom unless a rule provides
37 otherwise for a particular type of document. The page numbering for papers in electronic
38 form must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page
39 number need not appear on the first page.
40

41 ****DRAFTER'S NOTE:** Judicial officers and research attorneys find it easier to navigate*
42 *electronic filings if the page number in the footer matches the page number of the*
43 *electronic document. Similar language appears in the local rules adopted by several*

1 *appellate courts for e-filing. (See, e.g., [Ct. App., Third Dist., Local Rules, rule 5\(b\)\(2\),](#)*
2 *[Format; Pagination; Ct. App., Sixth Dist., Local Rules, rule 2\(b\)\(3\), Format; Pagination of](#)*
3 *[Documents.](#))*

4
5 **Rule 2.110. Footer**

6
7 **(a) Location**

8
9 Except for exhibits, each paper filed with the court must bear a footer in the bottom
10 margin of each page, placed below the page number and divided from the rest of
11 the document page by a printed line.

12
13 **(b) Contents**

14
15 The footer must contain the title of the paper (examples: “Complaint,” “XYZ
16 Corp.’s Motion for Summary Judgment”) or some clear and concise abbreviation.

17
18 **(c) Type Font size**

19
20 The title of the paper in the footer must be in at least 10-point type font.

21
22 **Rule 2.111. Format of first page**

23
24 The first page of each paper must be in the following form:

- 25
- 26 (1) In the space commencing 1 inch from the top of the page with line 1, to the left of
27 the center of the page, the name, office address or, if none, residence address or
28 mailing address (if different), telephone number, fax number and e-mail address (~~if~~
29 ~~available~~), and State Bar membership number of the attorney for the party in whose
30 behalf the paper is presented, or of the party if he or she is appearing in person. The
31 inclusion of a fax number or e-mail address on any document does not constitute
32 consent to service by fax or e-mail unless otherwise provided by law.
 - 33
 - 34 (2) In the first 2 inches of space between lines 1 and 7 to the right of the center of the
35 page, a blank space for the use of the clerk.
 - 36
 - 37 (3) On line 8, at or below 3 1/3 inches from the top of the page, the title of the court.
 - 38
 - 39 (4) Below the title of the court, in the space to the left of the center of the page, the title
40 of the case. In the title of the case on each initial complaint or cross-complaint, the
41 name of each party must commence on a separate line beginning at the left margin
42 of the page. On any subsequent pleading or paper, it is sufficient to provide a short
43 title of the case (1) stating the name of the first party on each side, with appropriate

1 indication of other parties, and (2) stating that a cross-action or cross-actions are
2 involved (e.g., “and Related Cross-action”), if applicable.

- 3
4 (5) To the right of and opposite the title, the number of the case.
5
6 (6) Below the number of the case, the nature of the paper and, on all complaints and
7 petitions, the character of the action or proceeding. In a case having multiple
8 parties, any answer, response, or opposition must specifically identify the
9 complaining, propounding, or moving party and the complaint, motion, or other
10 matter being answered or opposed.
11
12 (7) Below the nature of the paper or the character of the action or proceeding, the name
13 of the judge and department, if any, to which the case is assigned.
14
15 (8) Below the nature of the paper or the character of the action or proceeding, the word
16 “Referee:” followed by the name of the referee, on any paper filed in a case
17 pending before a referee appointed under Code of Civil Procedure section 638 or
18 639.
19
20 (9) On the complaint, petition, or application filed in a limited civil case, below the
21 character of the action or proceeding, the amount demanded in the complaint,
22 petition, or application, stated as follows: “Amount demanded exceeds \$10,000” or
23 “Amount demanded does not exceed \$10,000,” as required by Government Code
24 section 70613.
25
26 (10) In the caption of every pleading and every other paper filed in a limited civil case,
27 the words “Limited Civil Case,” as required by Code of Civil Procedure section
28 422.30(b).
29
30 (11) If a case is reclassified by an amended complaint, cross-complaint, amended cross-
31 complaint, or other pleading under Code of Civil Procedure section 403.020 or
32 403.030, the caption must indicate that the action or proceeding is reclassified by
33 this pleading. If a case is reclassified by stipulation under Code of Civil Procedure
34 section 403.050, the title of the stipulation must state that the action or proceeding
35 is reclassified by this stipulation. The caption or title must state that the case is a
36 limited civil case reclassified as an unlimited civil case, or an unlimited civil case
37 reclassified as a limited civil case, or other words to that effect.
38

39 **Rule 2.112. Separate causes of action, counts, and defenses**

40
41 Each separately stated cause of action, count, or defense must specifically state:

- 1
2 (1) Its number (e.g., “first cause of action”);
3
4 (2) Its nature (e.g., “for fraud”);
5
6 (3) The party asserting it if more than one party is represented on the pleading (e.g.,
7 “by plaintiff Jones”); and
8
9 (4) The party or parties to whom it is directed (e.g., “against defendant Smith”).
10

11 **Rule 2.113. Binding**

12
13 Each paper not filed electronically must consist entirely of original pages without riders
14 and must be firmly bound together at the top.
15

16 **Rule 2.114. Exhibits**

17
18 Exhibits submitted with papers not filed electronically may be fastened to pages of the
19 specified size and, when prepared by a machine copying process, must be equal to
20 computer-processed materials in legibility and permanency of image. Exhibits submitted
21 with papers filed electronically must meet the requirements in rule 2.256(b), except for
22 subdivision (b)(3).
23

24 **DRAFTER’S NOTE: Please see discussion below for the proposed amendment to rule*
25 *2.256.*
26

27 **Rule 2.115. Hole punching**

28
29 When papers are not filed electronically, each paper presented for filing must contain two
30 prepunched normal-sized holes, centered 2 1/2 inches apart and 5/8 inch from the top of
31 the paper.
32

33 **Rule 2.116. Changes on face of paper**

34
35 Any addition, deletion, or interlineation to a paper must be initialed by the clerk or judge
36 at the time of filing.
37

38 **Rule 2.117. Conformed copies of papers**

39
40 All copies of papers served must conform to the original papers filed, including the
41 numbering of lines, pagination, additions, deletions, and interlineations except that, with
42 the agreement of the other party, a party serving papers by nonelectronic means may
43 serve that other party with papers printed on both sides of the page.

1 **Rule 2.118. Acceptance of papers for filing**

2
3 **(a) Papers not in compliance**

4
5 The clerk of the court must not accept for filing or file any papers that do not
6 comply with the rules in this chapter, except the clerk must not reject a paper for
7 filing solely on the ground that:

- 8
9 (1) It is handwritten or hand-printed; or
10
11 (2) The handwriting or hand printing on the paper is in a color other than
12 black or blue-black.

13
14 **(b) Absence of fax number or e-mail address**

15
16 The clerk must not reject a paper for filing solely on the ground that it does not
17 contain an attorney's or a party's fax number or e-mail address on the first page.

18
19 **(c) Filing of papers for good cause**

20
21 For good cause shown, the court may permit the filing of papers that do not comply
22 with the rules in this chapter.

23
24 **Rule 2.119. Exceptions for forms**

25
26 Except as provided elsewhere in the California Rules of Court, the rules in this chapter do
27 not apply to Judicial Council forms, local court forms, or forms for juvenile dependency
28 proceedings produced by the California State Department of Social Services Child
29 Welfare Systems Case Management System.

30
31 **Chapter 2. General Rules on Forms**

32
33 **Rule 2.130. Application**

34
35 The rules in this chapter apply to Judicial Council forms, local court forms, and all other
36 official forms to be filed in the trial courts. The rules apply to forms filed both in paper
37 form and electronically, unless otherwise specified.

38
39 **Rule 2.132. True copy certified**

40
41 A party or attorney who files a form certifies by filing the form that it is a true copy of the
42 form.

1 **Rule 2.133. Hole punching**

2
3 All forms not filed electronically must contain two prepunched normal-sized holes,
4 centered 2½ inches apart and ⅝ inch from the top of the form.

5
6 **Rule 2.134. Forms longer than one page**

7
8 **(a) Single side may be used**

9
10 If a form not filed electronically is longer than one page, the form may be printed
11 on sheets printed only on one side even if the original has two sides to a sheet.

12
13 **(b) Two-sided forms must be tumbled**

14
15 If a form not filed electronically is filed on a sheet printed on two sides, the reverse
16 side must be rotated 180 degrees (printed head to foot).

17
18 **(c) Multiple-page forms must be bound**

19
20 If a form not filed electronically is longer than one page, it must be firmly bound at
21 the top.

22
23 **Rule 2.135. Filing of handwritten or hand-printed forms**

24
25 The clerk must not reject for filing or refuse to file any Judicial Council or local court
26 form solely on the ground that:

27
28 (1) It is completed in handwritten or hand-printed characters; or

29
30 (2) The handwriting or hand-printing is a color other than blue-black or black.

31
32 **Rule 2.140. Judicial Council forms**

33
34 Judicial Council forms are governed by the rules in this chapter and chapter 4 of title 1.
35 Electronic Judicial Council forms must meet the requirements in rule 2.256(b), except for
36 subdivision (b)(3).

37
38 **Chapter 3. Other Forms**

39
40 **Rule 2.150. Authorization for computer-generated or typewritten forms for proof**
41 **of service of summons and complaint**

1 (a) **Computer-generated or typewritten forms; conditions**

2
3 Notwithstanding the adoption of mandatory form *Proof of Service of Summons*
4 (form POS-010), a form for proof of service of a summons and complaint prepared
5 entirely by word processor, typewriter, or similar process may be used for proof of
6 service in any applicable action or proceeding if the following conditions are met:

- 7
- 8 (1) The form complies with the rules in chapter 1 of this division except as
9 otherwise provided in this rule, but numbered lines are not required
 - 10
11 (2) The left, right, and bottom margins of the proof of service must be at least 1/2
12 inch. The top margin must be at least 3/4 of an inch. The typeface must be
13 Times New Roman, Courier, Arial, or an equivalent typeface not smaller than
14 9 points. Text must be single-spaced and a blank line must precede each main
15 numbered item.
 - 16
17 (3) The title and all the text of form POS-010 that is not accompanied by a check
18 box must be copied word for word except for any instructions, which need
19 not be copied. In addition, the optional text describing the particular method
20 of service used must be copied word for word, except that the check boxes
21 must not be copied. Any optional text not describing such service need not be
22 included.
 - 23
24 (4) The Judicial Council number of the *Proof of Service of Summons* must be
25 typed as follows either in the left margin of the first page opposite the last
26 line of text or at the bottom of each page: "Judicial Council form POS-010."
 - 27
28 (5) The text of form POS-010 must be copied in the same order as it appears on
29 form POS-010 using the same item numbers. A declaration of diligence may
30 be attached to the proof of service or inserted as item 5b(5).
 - 31
32 (6) Areas marked "For Court Use" must be copied in the same general locations
33 and occupy approximately the same amount of space as on form POS-010.
 - 34
35 (7) The telephone number of the attorney or party must appear flush with the left
36 margin and below the attorney's or party's address.
 - 37
38 (8) The name of the court must be flush with the left margin. The address of the
39 court is not required.
 - 40
41 (9) Material that would have been entered onto form POS-010 must be entered
42 with each line indented 3 inches from the left margin.
 - 43

1 **(b) Compliance with rule**

2
3 The act of filing a computer-generated or typewritten form under this rule
4 constitutes a certification by the party or attorney filing the form that it complies
5 with this rule and is a true and correct copy of the form to the extent required by
6 this rule.

7
8 * * *

9
10 **Division 4. Court Records**

11
12 **Rule 2.251. Electronic service**

13
14 **(a) Authorization for electronic service**

15
16 When a document may be served by mail, express mail, overnight delivery, or fax
17 transmission, the document may be served electronically under Code of Civil
18 Procedure section 1010.6 and the rules in this chapter.

19
20 **(b) Electronic service by consent of the parties**

21
22 (1) Electronic service may be established by consent of the parties in an action. A
23 party indicates that the party agrees to accept electronic service by:

24
25 (A) Serving a notice on all parties that the party accepts electronic service
26 and filing the notice with the court. The notice must include the
27 electronic service address at which the party agrees to accept service; or

28
29 (B) Electronically filing any document with the court. The act of electronic
30 filing is evidence that the party agrees to accept service at the electronic
31 service address the party has furnished to the court under rule
32 2.256(a)(4). This subparagraph (B) does not apply to self-represented
33 parties; they must affirmatively consent to electronic service under
34 subparagraph (A).

35
36 (2) A party that has consented to electronic service under (1) and has used an
37 electronic filing service provider to serve and file documents in a case
38 consents to service on that electronic filing service provider as the designated
39 agent for service for the party in the case, until such time as the party
40 designates a different agent for service.

41
42 **(c) Electronic service required by local rule or court order**

1 (1) A court may require parties to serve documents electronically in specified
2 actions by local rule or court order, as provided in Code of Civil Procedure
3 section 1010.6 and the rules in this chapter.
4

5 (2) Except when personal service is otherwise required by statute or rule, a party
6 that is required to file documents electronically in an action must also serve
7 documents and accept service of documents electronically from all other
8 parties, unless:
9

10 (A) The court orders otherwise, or
11

12 (B) The action includes parties that are not required to file or serve
13 documents electronically, including self-represented parties; those
14 parties are to be served by non-electronic methods unless they
15 affirmatively consent to electronic service.
16

17 (3) Each party that is required to serve and accept service of documents
18 electronically must provide all other parties in the action with its electronic
19 service address and must promptly notify all other parties and the court of
20 any changes under (f).
21

22 **(d) Maintenance of electronic service lists**
23

24 A court that permits or requires electronic filing in a case must maintain and make
25 available electronically to the parties an electronic service list that contains the
26 parties' current electronic service addresses, as provided by the parties that have
27 filed electronically in the case.
28

29 **(e) Service by the parties**
30

31 (1) Notwithstanding (d), parties are responsible for electronic service on all other
32 parties in the case. A party may serve documents electronically directly, by
33 an agent, or through a designated electronic filing service provider.
34

35 (2) A document may not be electronically served on a nonparty unless the
36 nonparty consents to electronic service or electronic service is otherwise
37 provided for by law or court order.
38

39 **(f) Change of electronic service address**
40

41 (1) A party whose electronic service address changes while the action or
42 proceeding is pending must promptly file a notice of change of address

1 electronically with the court and must serve this notice electronically on all
2 other parties.

3
4 (2) A party's election to contract with an electronic filing service provider to
5 electronically file and serve documents or to receive electronic service of
6 documents on the party's behalf does not relieve the party of its duties under
7 (1).

8
9 (3) An electronic service address is presumed valid for a party if the party files
10 electronic documents with the court from that address and has not filed and
11 served notice that the address is no longer valid.

12
13 **(g) Reliability and integrity of documents served by electronic notification**

14
15 A party that serves a document by means of electronic notification must:

- 16
17 (1) Ensure that the documents served can be viewed and downloaded using the
18 hyperlink provided;
- 19
20 (2) Preserve the document served without any change, alteration, or modification
21 from the time the document is posted until the time the hyperlink is
22 terminated; and
- 23
24 (3) Maintain the hyperlink until either:
- 25
26 (A) All parties in the case have settled or the case has ended and the time
27 for appeals has expired; or
- 28
29 (B) If the party is no longer in the case, the party has provided notice to all
30 other parties that it is no longer in the case and that they have 60 days
31 to download any documents, and 60 days have passed after the notice
32 was given.

33
34 **(h) When service is complete**

- 35
36 (1) Electronic service of a document is complete at the time of the electronic
37 transmission of the document or at the time that the electronic notification of
38 service of the document is sent. If an electronic filing service provider is used
39 for service, the service is complete at the time that the electronic filing
40 service provider electronically transmits the document or sends electronic
41 notification of service.

- 1 (2) If a document is served electronically, any period of notice, or any right or
2 duty to act or respond within a specified period or on a date certain after
3 service of the document, is extended by two court days, unless otherwise
4 provided by a statute or a rule.
5
6 (3) The extension under (2) does not extend the time for filing:
7
8 (A) A notice of intent to move for a new trial;
9
10 (B) A notice of intent to move to vacate the judgment under Code of Civil
11 Procedure section 663a; or
12
13 (C) A notice of appeal.
14
15 (4) Service that occurs after the close of business is deemed to have occurred on
16 the next court day.

17
18 **(i) Proof of service**

- 19
20 (1) Proof of electronic service may be by any of the methods provided in Code of
21 Civil Procedure section 1013a, ~~except that~~ with the following exceptions:
22
23 (A) The proof of electronic service does not need to state that the person
24 making the service is not a party to the case.
25
26 (B) The proof of electronic service must state:
27
28 (A~~1~~) The electronic service address of the person making the service,
29 in addition to that person's residence or business address;
30
31 (B~~2~~) The date and time of the electronic service, instead of the date
32 and place of deposit in the mail;
33
34 (C~~3~~) The name and electronic service address of the person served, in
35 place of that person's name and address as shown on the
36 envelope; and
37
38 (D~~4~~) That the document was served electronically, in place of the
39 statement that the envelope was sealed and deposited in the mail
40 with postage fully prepaid.
41
42 (2) Proof of electronic service may be in electronic form and may be filed
43 electronically with the court.

1 (3) Under rule 3.1300(c), proof of service of the moving papers must be filed at
2 least five court days before the hearing.

3
4 (4) The party filing the proof of electronic service must maintain the printed
5 form of the document bearing the declarant’s original signature and must
6 make the document available for inspection and copying on the request of the
7 court or any party to the action or proceeding in which it is filed, in the
8 manner provided in rule 2.257(a).

9
10 ***DRAFTER’S NOTE:** [Code of Civil Procedure section 1013a](#) requires that proof of
11 service by mail be made by affidavit or certificate showing that the “the person making
12 the service” is “not a party to the cause.” However, [Code of Civil Procedure section](#)
13 [1010.6](#) allows for e-service by a party. (Code Civ. Proc., § 1010.6(a)(1)(A) [“Electronic
14 service may be performed directly by a party, by an agent of a party, including the
15 party’s attorney, or through an electronic filing service provider,” underlining added].) In
16 stating the requirements for proof of electronic service, rule 2.251(i) incorporates the
17 requirements for proof of mailing in Code of Civil Procedure section 1013a, subject to
18 several exceptions. To implement section 1010.6(a)(1)(A), the proposed rule
19 amendment would add another exception that would recognize that proof of electronic
20 service need not state that the party making the service “is not a party to a cause.”

21
22 **(j) Electronic service by or on court**

23
24 (1) The court may electronically serve any notice, order, judgment, or other
25 document issued by the court in the same manner that parties may serve
26 documents by electronic service.

27
28 (2) A document may be electronically served on a court if the court consents to
29 electronic service or electronic service is otherwise provided for by law or
30 court order. A court indicates that it agrees to accept electronic service by:

31
32 (A) Serving a notice on all parties that the court accepts electronic service.
33 The notice must include the electronic service address at which the
34 court agrees to accept service; or

35
36 (B) Adopting a local rule stating that the court accepts electronic service.
37 The rule must indicate where to obtain the electronic service address at
38 which the court agrees to accept service.

39
40 **Rule 2.252. General rules on electronic filing of documents**

41
42 **(a) In general**

1 A court may provide for electronic filing of documents in actions and proceedings
2 as provided under Code of Civil Procedure section 1010.6 and the rules in this
3 chapter.
4

5 **(b) Direct and indirect electronic filing**
6

7 Except as otherwise provided by law, a court may provide for the electronic filing
8 of documents directly with the court, indirectly through one or more approved
9 electronic filing service providers, or through a combination of direct and indirect
10 means.
11

12 **(c) Effect of document filed electronically**
13

14 (1) A document that the court or a party files electronically under the rules in this
15 chapter has the same legal effect as a document in paper form.
16

17 (2) Filing a document electronically does not alter any filing deadline.
18

19 **(d) Filing in paper form**
20

21 When it is not feasible for a party to convert a document to electronic form by
22 scanning, imaging, or another means, a court may allow that party to file the
23 document in paper form.
24

25 **(e) Original documents**
26

27 In a proceeding that requires the filing of an original document, an electronic filer
28 may file an electronic copy of a document if the original document is then filed
29 with the court within 10 calendar days.
30

31 **(f) Application for waiver of court fees and costs**
32

33 The court may permit electronic filing of an application for waiver of court fees and
34 costs in any proceeding in which the court accepts electronic filings.
35

36 **(g) Orders and judgments**
37

38 The court may electronically file any notice, order, minute order, judgment, or
39 other document prepared by the court.
40

41 **(h) Proposed orders**
42

1 Proposed orders may be filed and submitted electronically as provided in rule
2 3.1312.

3
4 **(i) Paper courtesy copies**

5
6 A court may provide by local rule that electronic filers are required to submit paper
7 courtesy copies of an electronically filed document if a hearing is scheduled to take
8 place within 48 hours after the document is transmitted to the court.
9

10 ***DRAFTER'S NOTE:** *When the Judicial Council adopted the uniform mandatory e-filing*
11 *rules in 2013, the Superior Court of San Diego County recommended adding a provision*
12 *to the rules that would allow courts to require e-filers to provide paper courtesy copies in*
13 *any proceeding to be held within a day of filing. (See [Judicial Council of Cal., Electronic](#)*
14 *[Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and](#)*
15 *[Service in Civil Cases \(June 21, 2003\), p. 148.](#)) The advisory committees decided not to*
16 *pursue the court's recommendation at the time, but indicated that they might consider it*
17 *in the future. (Id. at p. 33.) Currently, the rules are silent as to whether a court may*
18 *require paper courtesy copies.*

19
20 *In the absence of any guidance in the rules, some courts have required paper courtesy*
21 *copies of e-filed documents in certain instances. The current e-filing requirements for the*
22 *Superior Court of San Diego County's Civil Division provide as follows:*

23
24 *If a hearing is set within 2 court days of the time that documents are*
25 *electronically filed, litigant(s) must provide hard copies of the documents*
26 *to the court. Transaction ID numbers must be noted on the documents to*
27 *the extent it is feasible to do so. Hard copies for Ex Parte hearings must*
28 *be delivered directly to the department on or before 12 Noon the court*
29 *day immediately preceding the hearing date.*

30
31 *([Super. Ct. San Diego County, Electronic Filing Requirements of the San Diego Superior](#)*
32 *[Court – Civil Division \(rev. Aug. 28, 2014\), p. 6.](#))*

33
34 *The Superior Court of Orange County requires that e-filers provide paper courtesy*
35 *copies of e-filed documents in accordance with the court's Local Rule 317, which*
36 *requires courtesy copies of the following prior to trial: all trial briefs, exhibits, voir dire*
37 *questions, motions in limine and related filings, Joint Statement of the Case, Joint*
38 *Witness List, and Joint List of Controverted Issues. (See [Super. Ct. Orange County,](#)*
39 *[EFiling Frequently Asked Questions for Civil and Probate/Mental Health Case Types, Is](#)*
40 *[a Courtesy Copy of My Document Required in Addition to My Efiled Document? \(as of](#)*
41 *[Dec. 15, 2015 \[hereafter "EFiling FAQs"\]](#)); see also [Super. Ct. Orange County, Local](#)*
42 *[Rules, rule 317, Issue Conference/Case Management Conference, p. 3-12.](#)) The court*
43 *otherwise leaves it up to the individual judge to determine when, if ever, paper courtesy*

1 copies of e-filed documents are required. ([See E-Filing FAQs, supra](#) [“To determine if
2 courtesy copies of other documents are required, please check with the courtroom that
3 your case is assigned for their policy”].)
4

5 *The subcommittees should consider whether to recommend amending the rules to allow
6 courts to require paper courtesy copies. If the subcommittees agree, staff would
7 recommend adding express limitations on when a paper courtesy copy may be required;
8 the benefits of e-filing for litigants and the courts would diminish if the exception were to
9 swallow the rule. Staff’s suggestion for limiting paper courtesy copies to instances where
10 a hearing is scheduled to take place within 48 hours of electronically transmitting the
11 filing to the court is based on the e-filing requirements of the Superior Court of San
12 Diego County.*

13
14 *This suggestion also appears reasonable in light of the Superior Court of Orange
15 County’s 2014 report to the Legislature on its experience implementing its mandatory e-
16 filing pilot project. In the report, the court estimated that the clerk is able to review and
17 file (or reject) most e-filed documents within 24 hours of receipt. (See [Jud. Council of
18 Cal., Report to the Legislature, Report on the Superior Court of Orange County’s
19 Mandatory E-Filing Pilot Project \(Sept. 30, 2014\) Attachment, p. 13.](#)) This suggests that
20 electronic filings would usually be available to judicial officers in the court’s case
21 management system within 48 hours after it is transmitted to the court.*

22
23 *Do the subcommittees want to add language in the rules allowing courts to require paper
24 courtesy copies? If so, do the subcommittees agree with the proposed amendment? Are
25 there any other instances when the subcommittees would want to allow for paper
26 courtesy copies?*

27
28 * * *

29
30 **Rule 2.256. Responsibilities of electronic filer**

31
32 **(a) Conditions of filing**

33
34 Each electronic filer must:

- 35
36 (1) Comply with any court requirements designed to ensure the integrity of
37 electronic filing and to protect sensitive personal information;
38
39 (2) Furnish information the court requires for case processing;
40
41 (3) Take all reasonable steps to ensure that the filing does not contain computer
42 code, including viruses, that might be harmful to the court’s electronic filing
43 system and to other users of that system;

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- (4) Furnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service;
- (5) Immediately provide the court and all parties with any change to the electronic filer’s electronic service address; and
- (6) If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

(b) Format of documents to be filed electronically

A document that is filed electronically with the court must be in a format specified by the court unless it cannot be created in that format. The format adopted by a court must meet the following requirements:

- (1) The software for creating and reading documents must be in the public domain or generally available at a reasonable cost.
- (2) The printing of documents must not result in the loss of document text, format, or appearance.
- (3) The document must be text searchable, unless it is an exhibit or Judicial Council form.

If a document is filed electronically under the rules in this chapter and cannot be formatted to be consistent with a formatting rule elsewhere in the California Rules of Court, the rules in this chapter prevail.

****DRAFTER’S NOTE:** Mr. Snorri Ogata, the Chief Information Officer of the Superior Court of Los Angeles County, has requested that the rules be amended to require that e-filed documents—with the exception of scanned exhibits—be text searchable. (See generally [Minnesota Judicial Branch, Guide to E-filing with “Searchable” Portable Document Format \(PDFs\) in Minnesota Courts \(rev. Aug. 16, 2013\)](#).) He explains that text-searchable documents assist judicial officers and research attorneys. Although some courts are buying Optical Character Recognition (“OCR”) software to make electronic documents text searchable, this is a costly process and results in additional delays before the e-filed document is made available to judges.*

The e-filing requirements for the Superior Court of San Diego County’s Civil and Probate Divisions provide that all e-filed documents must be “in a text-searchable format, i.e.,

1 OCR.” ([Super. Ct. San Diego County, Electronic Filing Requirements of the San Diego](#)
2 [Superior Court – Civil Division \(rev. Aug. 28, 2014\), p. 4](#); [Super. Ct. San Diego County,](#)
3 [Electronic Filing Requirements of the San Diego Superior Court – Probate Division \(rev.](#)
4 [Oct. 9, 2013\), pp. 1–2.](#)) Similarly, several appellate divisions of the Court of Appeal
5 require that the e-filed documents be text searchable. (See [Ct. App., Third Dist., Local](#)
6 [Rules of Ct., rule 5\(b\)\(1\), Format](#); [Ct. App., Sixth Dist., Local Rules of Ct., rule 2\(b\)\(1\),](#)
7 [Format; Form of Documents.](#))

8
9 Staff suggest requiring that “papers”—defined in rule 2.3(2) as “all documents, except
10 exhibits and copies of exhibits, that are offered for filing in any case, but does not include
11 Judicial Council and local court forms, records on appeal in limited civil cases, or briefs
12 filed in appellate divisions”—be text searchable. Because “papers” are created using
13 word processing software (e.g., Word, Word Perfect, or free Apache Open Office), they
14 are text searchable and can readily be converted to text-searchable PDF without any
15 additional cost.

16
17 The draft language would carve out exceptions for exhibits and forms. (See also
18 [proposed amendment to rule 2.114](#) (exhibits); [proposed amendment to rule 2.140](#)
19 (forms); [proposed amendment to rule 3.1110\(f\)](#) (exhibits submitted with motions).) Often
20 exhibits are created by digitally imaging paper documents using an optical scanner.
21 Many new scanners include OCR software that converts scans, PDFs, or images of text
22 into text-searchable documents. Otherwise, scanned or digitally imaged documents may
23 require using OCR software to make them text searchable. Free open-source OCR
24 software appears to be available on the internet. (See <http://www.paperfile.net>.) But
25 purchasing OCR software generally costs between \$70 and \$400, creating an additional
26 burden on litigants.

27
28 Fillable electronic forms are available on the Judicial Council website. If created and filed
29 electronically, these forms are text searchable. Mr. Ogata recommends also requiring
30 that forms be text searchable. However, this requirement might be more problematic as
31 self-represented litigants (“SRLs”) often fill out forms by hand. SRLs are exempt from
32 mandatory e-filing. (See [Cal. Rules of Court, rule 2.253\(b\)\(2\)](#).) This means that they can
33 always submit forms in paper at the clerk’s office if the electronic formatting
34 requirements are too burdensome. However, in order to encourage e-filing among SRLs,
35 and to assist self-help centers and legal aid organizations in their efforts to facilitate e-
36 filing by SRLs, the subcommittees may want to consider excluding forms from the text-
37 searchable requirement.

38
39 Do the subcommittees recommend requiring that e-filed “papers” be text searchable?
40 How about exhibits and forms?

41
42 In addition, do the subcommittees recommend including any additional electronic
43 formatting requirements in the rules at this time? For example, some courts require that

1 all e-filed documents must be in Portable Document Format (“PDF”). ([Super. Ct. San](#)
2 [Diego County, Electronic Filing Requirements of the San Diego Superior Court –](#)
3 [Probate Division \(rev. Oct. 9, 2013\), p. 1](#); [Super. Ct Riverside County, e-Fax System](#)
4 [Users Guide \(rev. Sept. 4, 2012\), p. 1](#).) The Superior Court of Orange County accepts
5 documents in both PDF and word processing format. ([Super. Ct. Orange County, E-](#)
6 [Filing FAQs, supra](#) [“Documents can be uploaded for eFiling as a PDF file or in a word
7 processing format (e.g., Word, WordPerfect, and several others . . .) that will be
8 converted to a PDF file”].)
9

10 Chapter 3. Sealed Records

11 Rule 2.550. Sealed records * * *

12 Rule 2.551. Procedures for filing records under seal

13 (a) Court approval required

14 A record must not be filed under seal without a court order. The court must not
15 permit a record to be filed under seal based solely on the agreement or stipulation
16 of the parties.
17

18 (b) Motion or application to seal a record

19 (1) *Motion or application required*

20 A party requesting that a record be filed under seal must file a motion or an
21 application for an order sealing the record. The motion or application must be
22 accompanied by a memorandum and a declaration containing facts sufficient
23 to justify the sealing.
24

25 (2) *Service of motion or application*

26 A copy of the motion or application must be served on all parties that have
27 appeared in the case. Unless the court orders otherwise, any party that already
28 has access to the records to be placed under seal must be served with a
29 complete, unredacted version of all papers as well as a redacted version.
30 Other parties must be served with only the public redacted version. If a
31 party’s attorney but not the party has access to the record, only the party’s
32 attorney may be served with the complete, unredacted version.
33

34 (3) *Procedure for party not intending to file motion or application*

1 (A) A party that files or intends to file with the court, for the purposes of
2 adjudication or to use at trial, records produced in discovery that are
3 subject to a confidentiality agreement or protective order, and does not
4 intend to request to have the records sealed, must:

5
6 (i) Lodge the unredacted records subject to the confidentiality
7 agreement or protective order and any pleadings, memorandums,
8 declarations, and other documents that disclose the contents of
9 the records, in the manner stated in (d);

10
11 (ii) File copies of the documents in (i) that are redacted so that they
12 do not disclose the contents of the records that are subject to the
13 confidentiality agreement or protective order; and

14
15 (iii) Give written notice to the party that produced the records that the
16 records and the other documents lodged under (i) will be placed
17 in the public court file unless that party files a timely motion or
18 application to seal the records under this rule.

19
20 (B) If the party that produced the documents and was served with the notice
21 under (A)(iii) fails to file a motion or an application to seal the records
22 within 10 days or to obtain a court order extending the time to file such
23 a motion or an application, the clerk must promptly ~~remove~~ transfer all
24 the documents in (A)(i) from the envelope, container, or secure
25 electronic file ~~where they are located and place them in~~ to the public
26 file. If the party files a motion or an application to seal within 10 days
27 or such later time as the court has ordered, these documents are to
28 remain conditionally under seal until the court rules on the motion or
29 application and thereafter are to be filed as ordered by the court.

30
31 (4) *Lodging of record pending determination of motion or application*

32
33 The party requesting that a record be filed under seal must lodge it with the
34 court under (d) when the motion or application is made, unless good cause
35 exists for not lodging it or the record has previously been lodged under
36 (3)(A)(i). Pending the determination of the motion or application, the lodged
37 record will be conditionally under seal.

38
39 (5) *Redacted and unredacted versions*

40
41 If necessary to prevent disclosure, any motion or application, any opposition,
42 and any supporting documents must be filed in a public redacted version and
43 lodged in a complete, unredacted version conditionally under seal. The cover

1 of the redacted version must identify it as “Public—Redacts materials from
2 conditionally sealed record.” The cover of the unredacted version must
3 identify it as “May Not Be Examined Without Court Order—Contains
4 material from conditionally sealed record.”
5

6 (6) *Return of lodged record*
7

8 If the court denies the motion or application to seal, the clerk must either (i)
9 return the lodged record if in paper form to the submitting party and or (ii)
10 permanently delete the lodged record if in electronic form and send notice of
11 the deletion to the submitting party. The clerk must not place ~~it~~ the lodged
12 record in the case file unless that party notifies the clerk in writing that the
13 record is to be filed. Unless otherwise ordered by the court, the submitting
14 party must notify the clerk within 10 days after the order denying the motion
15 or application.
16

17 ***DRAFTER’S NOTE:** *Last year in reviewing the proposed amendments to rule 3.1302*
18 *on lodged material, the State Bar’s Committee on the Administration of Justice*
19 *commented that returning a digital copy of lodged material was unnecessary. Instead,*
20 *the committee recommended requiring that the clerk delete the material. In reviewing the*
21 *comment, the advisory committees decided not to pursue this suggestion because they*
22 *“foresaw] that potential issues may arise by instructing clerks only to delete materials.*
23 *Having clerks return the materials would provide the parties with notice.” The*
24 *committees also indicated that they would give further consideration to this matter in*
25 *phase 2.*
26

27 *In their review of this comment, members of the Civil and Small Claims Advisory*
28 *Committee (CSCAC) questioned whether it made sense to “return” electronic records.*
29 *They expressed concern that the “return” of electronic records alone does not*
30 *necessarily mean that the court would be required to delete the electronic record*
31 *maintained in its document management system. Notwithstanding these concerns, the*
32 *CSCAC members decided to recommend the proposed amendments with the*
33 *understanding that the committee would revisit this issue in phase 2.*
34

35 *To address these concerns, staff suggest adding language to the rules that would*
36 *instruct court staff to permanently delete the lodged record if in electronic form and to*
37 *provide notice of the deletion to the submitting party. This would address the concerns*
38 *raised by the advisory committees regarding notice to the submitting party and deletion*
39 *of the lodged record from the document management system. Similar changes are*
40 *recommended below to rule 2.577(d)(4) and 3.1302(b).*
41

1 (c) **References to nonpublic material in public records**

2
3 A record filed publicly in the court must not disclose material contained in a record
4 that is sealed, conditionally under seal, or subject to a pending motion or an
5 application to seal.
6

7 (d) **Procedure for lodging of records**

8
9 (1) A record that may be filed under seal must be transmitted to the court in a
10 secure manner that preserves the confidentiality of the records to be lodged.
11 If the record is transmitted in paper form, it must be put in an envelope or
12 other appropriate container, sealed in the envelope or container, and lodged
13 with the court.
14

15 (2) The materials to be lodged under seal must be clearly identified as
16 “CONDITIONALLY UNDER SEAL.” If the materials are transmitted in
17 paper form, the envelope or container lodged with the court must be labeled
18 “CONDITIONALLY UNDER SEAL.”
19

20 (3) The party submitting the lodged record must affix to the electronic
21 transmission, the envelope, or the container a cover sheet that:
22

23 (A) Contains all the information required on a caption page under rule
24 2.111; and
25

26 (B) States that the enclosed record is subject to a motion or an application
27 to file the record under seal.
28

29 (4) On receipt of a record lodged under this rule, the clerk must endorse the
30 affixed cover sheet with the date of its receipt and must retain but not file the
31 record unless the court orders it filed.
32

33 (e) **Order**

34
35 (1) If the court grants an order sealing a record and if the sealed record is in
36 paper format, the clerk must substitute on the envelope or container for the
37 label required by (d)(2) a label prominently stating “SEALED BY ORDER
38 OF THE COURT ON (DATE),” and must replace the cover sheet required by
39 (d)(3) with a filed-endorsed copy of the court’s order. If the sealed record is
40 in an electronic format, the clerk must file the court’s order, ~~store~~ maintain
41 the record ordered sealed in a secure manner, and clearly identify the record
42 as sealed by court order on a specified date.
43

- 1 (2) The order must state whether—in addition to the sealed records the order
2 itself, the register of actions, any other court records, or any other records
3 relating to the case are to be sealed.
4
- 5 (3) The order must state whether any person other than the court is authorized to
6 inspect the sealed record.
7
- 8 (4) Unless the sealing order provides otherwise, it prohibits the parties from
9 disclosing the contents of any materials that have been sealed in anything that
10 is subsequently publicly filed.
11

12 **(f) Custody of sealed records**

13 Sealed records must be securely filed and kept separate from the public file in the
14 case. If the sealed records are in electronic form, appropriate access controls must
15 be established to ensure that only authorized persons may access the sealed records.
16

17

18 **(g) Custody of voluminous records**

19

20 If the records to be placed under seal are voluminous and are in the possession of a
21 public agency, the court may by written order direct the agency instead of the clerk
22 to maintain custody of the original records in a secure fashion. If the records are
23 requested by a reviewing court, the trial court must order the public agency to
24 deliver the records to the clerk for transmission to the reviewing court under these
25 rules.
26

27 **(h) Motion, application, or petition to unseal records**

- 28
- 29 (1) A sealed record must not be unsealed except on order of the court.
30
- 31 (2) A party or member of the public may move, apply, or petition, or the court on
32 its own motion may move, to unseal a record. Notice of any motion,
33 application, or petition to unseal must be filed and served on all parties in the
34 case. The motion, application, or petition and any opposition, reply, and
35 supporting documents must be filed in a public redacted version and a sealed
36 complete version if necessary to comply with (c).
37
- 38 (3) If the court proposes to order a record unsealed on its own motion, the court
39 must give notice to the parties stating the reason for unsealing the record.
40 Unless otherwise ordered by the court, any party may serve and file an
41 opposition within 10 days after the notice is provided and any other party
42 may file a response within 5 days after the filing of an opposition.
43

- 1 (4) In determining whether to unseal a record, the court must consider the
2 matters addressed in rule 2.550(c)-(e).
3
- 4 (5) The order unsealing a record must state whether the record is unsealed
5 entirely or in part. If the court's order unseals only part of the record or
6 unseals the record only as to certain persons, the order must specify the
7 particular records that are unsealed, the particular persons who may have
8 access to the record, or both. If, in addition to the records in the envelope,
9 container, or secure electronic file, the court has previously ordered the
10 sealing order, the register of actions, or any other court records relating to the
11 case to be sealed, the unsealing order must state whether these additional
12 records are unsealed.

13
14 * * *

15
16 **Chapter 5. Name Change Proceedings Under Address Confidentiality Program**

17
18 **Rule 2.575. Confidential information in name change proceedings under address**
19 **confidentiality program * * ***

20
21 **Rule 2.576. Access to name of the petitioner * * ***

22
23 **Rule 2.577. Procedures for filing confidential name change records under seal**

24
25 **(a) Court approval required**

26
27 Records in a name change proceeding may not be filed under seal without a court
28 order. A request by a confidential name change petitioner to file records under seal
29 may be made under the procedures in this chapter. A request by any other petitioner
30 to file records under seal must be made under rules 2.550-2.573.

31
32 **(b) Application to file records in confidential name change proceedings under seal**

33
34 An application by a confidential name change petitioner to file records under seal
35 must be filed at the time the petition for name change is submitted to the court. The
36 application must be made on the *Application to File Documents Under Seal in*
37 *Name Change Proceeding Under Address Confidentiality Program (Safe at*
38 *Home)* (form NC-410) and be accompanied by a *Declaration in Support of*
39 *Application to File Documents Under Seal in Name Change Proceeding Under*
40 *Address Confidentiality Program (Safe at Home)* (form NC-420), containing facts
41 sufficient to justify the sealing.
42

1 (c) **Confidentiality**

2
3 The application to file under seal must be kept confidential by the court until the
4 court rules on it.
5

6 (d) **Procedure for lodging of petition for name change**

- 7
8 (1) The records that may be filed under seal must be lodged with the court. If
9 they are transmitted on paper, they must be placed in a sealed envelope. If
10 they are transmitted electronically, they must be transmitted to the court in a
11 secure manner that preserves the confidentiality of the documents to be
12 lodged.
13
14 (2) If the petitioner is transmitting the petition on paper, the petitioner must
15 complete and affix to the envelope a completed *Confidential Cover Sheet—*
16 *Name Change Proceeding Under Address Confidentiality Program (Safe at*
17 *Home)* (form NC-400) and in the space under the title and case number mark
18 it “CONDITIONALLY UNDER SEAL.” If the petitioner is transmitting the
19 petition electronically, the first page of the electronic transmission must be a
20 completed *Confidential Cover Sheet—Name Change Proceeding Under*
21 *Address Confidentiality Program (Safe at Home)* (form NC-400) with the
22 space under the title and case number marked “CONDITIONALLY UNDER
23 SEAL.”
24
25 (3) On receipt of a petition lodged under this rule, the clerk must endorse the
26 cover sheet with the date of its receipt and must retain but not file the record
27 unless the court orders it filed.
28
29 (4) If the court denies the application to seal, the clerk must either (i) return the
30 lodged record if in paper form to the petitioner or (ii) permanently delete the
31 lodged record if in electronic form and send notice of the deletion to the
32 petitioner. The clerk and must not place ~~it~~ the lodged record in the case file
33 unless the petitioner notifies the clerk in writing within 10 days after the
34 order denying the application that the unsealed petition and related papers are
35 to be filed.
36

37 (e) **Consideration of application to file under seal**

38
39 The court may order that the record be filed under seal if it finds that all of the
40 following factors apply:
41

- 42 (1) There exists an overriding interest that overcomes the right of public access
43 to the record;

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- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed order to seal the record is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(f) Order

- (1) The order may be issued on *Order on Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-425).
- (2) Any order granting the application to seal must state whether the declaration in support of the application, the order itself, and any other record in the proceeding are to be sealed as well as the petition for name change.
- (3) For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the *Confidential Cover Sheet* that the matter is filed “CONDITIONALLY UNDER SEAL,” add a notation to that sheet prominently stating “SEALED BY ORDER OF THE COURT ON (DATE),” and file the documents under seal. For petitions transmitted electronically, the clerk must file the court’s order, ~~store~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

***DRAFTER’S NOTE:** *In discussions with Robert Oyung, CIO of the Superior Court of Santa Clara County, staff learned that “maintain” is more fitting from a technical perspective when describing electronic records.*

- (4) If the court grants the application to file under seal and issues an order under (e), the petition and any associated records may be filed under seal and ruled on by the court immediately.
- (5) The order must identify any person other than the court who is authorized to inspect the sealed records.

1 (g) **Custody of sealed records**

2
3 Sealed records must be securely filed and kept separate from the public file in the
4 case. If the sealed records are in electronic form, appropriate access controls must
5 be established to ensure that only authorized persons may access the sealed records.
6

7 (h) **Motion, application, or petition to unseal record**

- 8
9 (1) A sealed record may not be unsealed except by order of the court.
10
11 (2) Any member of the public seeking to unseal a record or a court proposing to
12 do so on its own motion must follow the procedures described in rule
13 2.551(h).

DRAFT

1 **Title 3. Civil Rules * * ***

2
3 **Division 3. Filing and Service * * ***

4
5 **Chapter 4. Miscellaneous**

6
7 **Rule 3.250. Limitations on the filing of papers**

8
9 **(a) Papers not to be filed**

10 The following papers, whether offered separately or as attachments to other
11 documents, may not be filed unless they are offered as relevant to the determination
12 of an issue in a law and motion proceeding or other hearing or are ordered filed for
13 good cause:

- 14
15
16 (1) Subpoena;
- 17
18 (2) Subpoena duces tecum;
- 19
20 (3) Deposition notice, and response;
- 21
22 (4) Notice to consumer or employee, and objection;
- 23
24 (5) Notice of intention to record testimony by audio or video tape;
- 25
26 (6) Notice of intention to take an oral deposition by telephone, videoconference,
27 or other remote electronic means;
- 28
29 (7) Agreement to set or extend time for deposition, agreement to extend time for
30 response to discovery requests, and notice of these agreements;
- 31
32 (8) Interrogatories, and responses or objections to interrogatories;
- 33
34 (9) Demand for production or inspection of documents, things, and places, and
35 responses or objections to demand;
- 36
37 (10) Request for admissions, and responses or objections to request;
- 38
39 (11) Agreement for physical and mental examinations;
- 40
41 (12) Demand for delivery of medical reports, and response;
- 42
43 (13) Demand for exchange of expert witnesses;

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- (14) Demand for production of discoverable reports and writings of expert witnesses;
- (15) List of expert witnesses whose opinion a party intends to offer in evidence at trial and declaration;
- (16) Statement that a party does not presently intend to offer the testimony of any expert witness;
- (17) Declaration for additional discovery;
- (18) Stipulation to enlarge the scope of number of discovery requests from that specified by statute, and notice of the stipulation;
- (19) Demand for bill of particulars or an accounting, and response;
- (20) Request for statement of damages, and response, unless it is accompanied by a request to enter default and is the notice of special and general damages;
- (21) Notice of deposit of jury fees;
- (22) Notice to produce party, agent, or tangible things before a court, and response; and
- (23) Offer to compromise, unless accompanied by an original proof of acceptance and a written judgment for the court's signature and entry of judgment.

(b) Retaining originals of papers not filed

- (1) Unless the paper served is a response, the party who serves a paper listed in (a) must retain the original with the original proof of service affixed. If served electronically under rule 2.251, the proof of electronic service must meet the requirements in rule 2.251(i).
- (2) The original of a response must be served, and it must be retained by the person upon whom it is served.
- (3) An original must be retained under (1) or (2) in the paper or electronic form in which it was created or received.

1 (4) All original papers must be retained until six months after final disposition of
2 the case, unless the court on motion of any party and for good cause shown
3 orders the original papers preserved for a longer period.
4

5 **(c) Papers defined**

6
7 As used in this rule, papers include printed forms furnished by the clerk, but do not
8 include notices filed and served by the clerk.
9

10 **Division 4. Parties and Actions * * ***

11
12 **Chapter 7. Coordination of Complex Actions * * ***

13
14 **Article 2. Procedural Rules Applicable to All Complex Coordination Proceedings**

15
16 **Rule 3.511. Papers to be submitted to the Chair of the Judicial Council * * ***

17
18 **Rule 3.512. Electronic submission of documents to the Chair of the Judicial Council**

19
20 **(a) Documents that ~~may~~ must be submitted electronically**

21
22 Any paper listed in rule 3.511(a) ~~may~~ must be submitted electronically to
23 coordination@jud.ca.gov.
24

25 **DRAFTER'S NOTE: Last year, this change was identified as a possible substantive*
26 *change for the advisory committees to consider during phase 2 of the Rules*
27 *Modernization Project. It would make electronic submission mandatory.*
28

29 **(b) Responsibilities of party submitting documents electronically**

30
31 A party submitting a document electronically must:

- 32
33 (1) Take all reasonable steps to ensure that the submission does not contain
34 computer code, including viruses, that might be harmful to the Judicial
35 Council's electronic system and to other users of that system; and
36
37 (2) Furnish one or more electronic notification addresses and immediately
38 provide any change to his or her electronic notification addresses.
39

40 **(c) Format of documents to be submitted electronically**

41
42 A document that is submitted electronically must meet the following requirements:
43

1 (1) The software for creating and reading the document must be in the public
2 domain or generally available at a reasonable cost; and

3

4 (2) The printing of documents must not result in the loss of document text,
5 format, or appearance.

6

7 **(d) Signature on documents under penalty of perjury**

8

9 (1) When a document to be submitted electronically requires a signature under
10 penalty of perjury, the document is deemed signed by the declarant if, before
11 submission, the declarant has signed a printed form of the document.

12

13 (2) By electronically submitting the document, the party submitting it indicates
14 that he or she has complied with subdivision (d)(1) of this rule and that the
15 original, signed document is available for review and copying at the request
16 of the court or any party.

17

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

21

22 (4) Within five days of service of the demand, the party on whom the demand is
23 made must make the original signed document available for review and
24 copying by all other parties.

25

26 **(e) Signature on documents not under penalty of perjury**

27

28 If a document does not require a signature under penalty of perjury, the document
29 is deemed signed by the party if the document is submitted electronically.

30

31 **(f) Digital signature**

32

33 A party is not required to use a digital signature on an electronically submitted
34 document.

35

36

* * *

37

38

Article 5. Administration of Coordinated Complex Actions

39

Rule 3.550. General administration by Judicial Council Staff

40

41

42

43

(a) Coordination attorney

1 Except as otherwise provided in the rules in this chapter, all necessary
2 administrative functions under this chapter will be performed at the direction of the
3 Chair of the Judicial Council by a coordination attorney.
4

5 **(b) Duties of coordination attorney**
6

7 The coordination attorney must at all times maintain:
8

- 9 (1) A list of active and retired judges who are qualified and currently available to
10 conduct coordination proceedings; and
11
12 (2) A register of all coordination proceedings and a file for each proceeding, ~~for~~
13 ~~public inspection during regular business hours at the San Francisco office of~~
14 ~~the Judicial Council~~ is available online at www.courts.ca.gov.
15

16 **DRAFTER'S NOTE: Last year, this proposed amendment was identified as a possible*
17 *substantive change for the advisory committees to consider during phase 2 of the Rules*
18 *Modernization Project. It would make the register and files for coordination proceedings*
19 *available online. Staff are exploring whether this proposal is feasible and will report to*
20 *the subcommittees at the joint meeting.*
21

22 **(c) Coordination proceeding title and case number**
23

24 The coordination attorney must assign each coordination proceeding a special title
25 and coordination proceeding number. Thereafter all papers in that proceeding must
26 bear that title and number.
27

28
29 **Division 7. Civil Case Management * * ***
30

31 **Chapter 5. Management of Complex Cases**
32

33 **Rule 3.750. Initial case management conference * * ***
34

35 **Rule 3.751. Electronic service**
36

37 Parties may consent to electronic service, or the court may require electronic
38 service by local rule or court order, under rule 2.251. The court may provide in a
39 case management order that documents filed electronically in a central electronic
40 depository available to all parties are deemed served on all parties.
41

42 **DRAFTER'S NOTE: Last year, this proposed amendment was identified as a possible*
43 *substantive change for the advisory committees to consider during phase 2 of the Rules*

1 *Modernization Project. It would reference the other means of consenting to electronic*
2 *service stated in rule 2.251.*

3
4 **Division 8. Alternative Dispute Resolution* * ***

5
6 **Chapter 2. Judicial Arbitration * * ***

7
8 **Rule 3.823. Rules of evidence at arbitration hearing**

9
10 **(a) Presence of arbitrator and parties**

11
12 All evidence must be taken in the presence of the arbitrator and all parties, except
13 where any of the parties has waived the right to be present or is absent after due
14 notice of the hearing.

15
16 **(b) Application of civil rules of evidence**

17
18 The rules of evidence governing civil cases apply to the conduct of the arbitration
19 hearing, except:

20
21 **(1) *Written reports and other documents***

22
23 Any party may offer written reports of any expert witness, medical records
24 and bills (including physiotherapy, nursing, and prescription bills),
25 documentary evidence of loss of income, property damage repair bills or
26 estimates, police reports concerning an accident that gave rise to the case,
27 other bills and invoices, purchase orders, checks, written contracts, and
28 similar documents prepared and maintained in the ordinary course of
29 business.

- 30
31 **(A)** The arbitrator must receive them in evidence if copies have been
32 delivered to all opposing parties at least 20 days before the hearing.
33
34 **(B)** Any other party may subpoena the author or custodian of the document
35 as a witness and examine the witness as if under cross-examination.
36
37 **(C)** Any repair estimate offered as an exhibit, and the copies delivered to
38 opposing parties, must be accompanied by:
39
40 **(i)** A statement indicating whether or not the property was repaired,
41 and, if it was, whether the estimated repairs were made in full or
42 in part; and
43

1 (ii) A copy of the receipted bill showing the items of repair made and
2 the amount paid.

3
4 (D) The arbitrator must not consider any opinion as to ultimate fault
5 expressed in a police report.

6
7 (2) *Witness statements*

8
9 The written statements of any other witness may be offered and must be
10 received in evidence if:

11
12 (A) They are made by declaration under penalty of perjury;

13
14 (B) Copies have been delivered to all opposing parties at least 20 days
15 before the hearing; and

16
17 (C) No opposing party has, at least 10 days before the hearing, delivered to
18 the proponent of the evidence a written demand that the witness be
19 produced in person to testify at the hearing. The arbitrator must
20 disregard any portion of a statement received under this rule that would
21 be inadmissible if the witness were testifying in person, but the
22 inclusion of inadmissible matter does not render the entire statement
23 inadmissible.

24
25 (3) *Depositions*

26
27 (A) The deposition of any witness may be offered by any party and must be
28 received in evidence, subject to objections available under Code of
29 Civil Procedure section 2025.410, notwithstanding that the deponent is
30 not “unavailable as a witness” within the meaning of Evidence Code
31 section 240 and no exceptional circumstances exist, if:

32
33 (i) The deposition was taken in the manner provided for by law or
34 by stipulation of the parties and within the time provided for in
35 these rules; and

36
37 (ii) Not less than 20 days before the hearing the proponent of the
38 deposition delivered to all opposing parties notice of intention to
39 offer the deposition in evidence.

40
41 (B) The opposing party, upon receiving the notice, may subpoena the
42 deponent and, at the discretion of the arbitrator, either the deposition
43 may be excluded from evidence or the deposition may be admitted and

1 the deponent may be further cross-examined by the subpoenaing party.
2 These limitations are not applicable to a deposition admissible under
3 the terms of Code of Civil Procedure section 2025.620.
4

5 **(c) Subpoenas**

6
7 (1) *Compelling witnesses to appear*
8

9 The attendance of witnesses at arbitration hearings may be compelled
10 through the issuance of subpoenas as provided in the Code of Civil
11 Procedure, in section 1985 and elsewhere in part 4, title 3, chapters 2 and 3. It
12 is the duty of the party requesting the subpoena to modify the form of
13 subpoena so as to show that the appearance is before an arbitrator and to give
14 the time and place set for the arbitration hearing.
15

16 (2) *Adjournment or continuances*
17

18 At the discretion of the arbitrator, nonappearance of a properly subpoenaed
19 witness may be a ground for an adjournment or continuance of the hearing.
20

21 (3) *Contempt*
22

23 If any witness properly served with a subpoena fails to appear at the
24 arbitration hearing or, having appeared, refuses to be sworn or to answer,
25 proceedings to compel compliance with the subpoena on penalty of contempt
26 may be had before the superior court as provided in Code of Civil Procedure
27 section 1991 for other instances of refusal to appear and answer before an
28 officer or commissioner out of court.
29

30 **(d) Delivery of documents**
31

32 For purposes of this rule, “delivery” of a document or notice may be accomplished
33 manually, by electronic means under Code of Civil Procedure section 1010.6 and
34 rule 2.251, or ~~by mail~~ in the manner provided by Code of Civil Procedure section
35 1013. If service is by electronic means, the times prescribed in this rule for delivery
36 of documents, notices, and demands are increased as provided by Code of Civil
37 Procedure section 1010.6. by two days. If service is in the manner provided by mail
38 Code of Civil Procedure section 1013, the times prescribed in this rule are
39 increased as provided by five days that section.
40

41 ***DRAFTER’S NOTE:** Last year, this proposed amendment was identified as a possible
42 substantive change for the advisory committees to consider during phase 2 of the Rules
43 Modernization Project.

1
2 **Division 11. Law and Motion* * ***

3
4 **Chapter 2. Format of Motion Papers**

5
6 **Rule 3.1110. General format**

7
8 **(a) Notice of motion**

9
10 A notice of motion must state in the opening paragraph the nature of the order
11 being sought and the grounds for issuance of the order.

12
13 **(b) Date of hearing and other information**

14
15 The first page of each paper must specify immediately below the number of the
16 case:

- 17
18 (1) The date, time, and location, if ascertainable, of any scheduled hearing and
19 the name of the hearing judge, if ascertainable;
20
21 (2) The nature or title of any attached document other than an exhibit;
22
23 (3) The date of filing of the action; and
24
25 (4) The trial date, if set.

26
27 **(c) Pagination of documents**

28
29 Documents bound or submitted together must be consecutively paginated. If the
30 document is filed electronically, the page numbering must begin with the first page
31 and use only Arabic numerals (e.g., 1, 2, 3). The page number need not appear on
32 the first page.

33
34 **(d) Reference to previously filed papers**

35
36 Any paper previously filed must be referred to by date of execution and title.

37
38 **(e) Binding**

39
40 For motions filed on paper, all pages of each document and exhibit must be
41 attached together at the top by a method that permits pages to be easily turned and
42 the entire content of each page to be read.

43

1 (f) **Format of exhibits**

- 2
- 3 (1) An index of exhibits must be provided. The index must briefly describe the
4 exhibit and identify the exhibit number or letter and page number.
- 5
- 6 (2) Pages from a single deposition must be designated as a single exhibit.
- 7
- 8 (3) Each paper exhibit must be separated by a hard 8½ x 11 sheet with hard
9 paper or plastic tabs extending below the bottom of the page, bearing the
10 exhibit designation. ~~An index to exhibits must be provided. Pages from a~~
11 ~~single deposition and associated exhibits must be designated as a single~~
12 ~~exhibit.~~
- 13
- 14 (4) Electronic exhibits must meet the requirements in rule 2.256(b), except for
15 subdivision (b)(3). Unless they are submitted by a self-represented party,
16 electronic exhibits must include electronic bookmarks with links to the first
17 page of each exhibit and with bookmark titles that identify the exhibit
18 number or letter and briefly describe the exhibit.

19

20 **Advisory Committee Comment**

21

22 **Subdivision (f)(4).** Under current technology, software programs that allow users to apply
23 electronic bookmarks to electronic documents are available for free.

24

25 ****DRAFTER'S NOTE:*** *Several courts require that exhibits have electronic bookmarks.*
26 *The e-filing requirements for the Superior Court of San Diego County provide that e-filed*
27 *motions containing exhibits must be bookmarked. ([Super. Ct. San Diego County,](#)*
28 *[Electronic Filing Requirements of the San Diego Superior Court – Civil Division \(rev.](#)*
29 *[Aug. 28, 2014\), p. 4.](#)) The court cites to current rule 3.1110(f)'s tabbing requirement as*
30 *support for this requirement.*

31

32 *Last year during phase 1 of the Rules Modernization Project, CSCAC and the*
33 *Information Technology Advisory Committee decided to table a proposed amendment*
34 *that would have limited the tabbing requirement in rule 3.1110(f) to exhibits in paper*
35 *form. The advisory committees decided not to pursue the amendment in deference to*
36 *the Superior Court of San Diego County, which requesting that the rule remain*
37 *untouched until the advisory committees were ready to consider electronic formatting*
38 *requirements for exhibits.*

39

40 *The Superior Court of Orange County also requires electronic bookmarking. (See, e.g.,*
41 *[Super. Ct. Orange County, E-Filing FAQs, supra](#) [*"All electronically filed law and motion*
42 *documents must have exhibits tabbed"].) As the court explains, "[b]ookmarking of*
43 *documents is extremely important as it aids legal research attorneys and judicial officers**

1 *in their review of documents submitted electronically.” (Ibid.) In addition, Mr. Ogata has*
2 *indicated that the Superior Court of Los Angeles County would be interested in requiring*
3 *electronic bookmarks.*

4
5 *Staff suggest amending the rule to provide that any e-filer who is not a self-represented*
6 *litigant must add electronic bookmarks to exhibits. The electronic bookmark feature is*
7 *available with Adobe Acrobat DC, which costs \$25 per month to access or \$449 to*
8 *download the software. Electronic bookmarks may also be added to PDFs using free*
9 *open source software, such as [SkySof’s PDF Bookmarks](#) and [JPdf Bookmarks](#).*

10
11 **(g) Translation of exhibits**

12
13 Exhibits written in a foreign language must be accompanied by an English
14 translation, certified under oath by a qualified interpreter.

15
16 * * *

17
18 **Rule 3.1113. Memorandum**

19
20 **(a) Memorandum in support of motion**

21
22 A party filing a motion, except for a motion listed in rule 3.1114, must serve and file a
23 supporting memorandum. The court may construe the absence of a memorandum as an
24 admission that the motion or special demurrer is not meritorious and cause for its denial
25 and, in the case of a demurrer, as a waiver of all grounds not supported.

26
27 **(b) Contents of memorandum**

28
29 The memorandum must contain a statement of facts, a concise statement of the law,
30 evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks
31 cited in support of the position advanced.

32
33 **(c) Case citation format**

34
35 A case citation must include the official report volume and page number and year of
36 decision. The court must not require any other form of citation.

37
38 **(d) Length of memorandum**

39
40 Except in a summary judgment or summary adjudication motion, no opening or
41 responding memorandum may exceed 15 pages. In a summary judgment or summary
42 adjudication motion, no opening or responding memorandum may exceed 20 pages. No
43 reply or closing memorandum may exceed 10 pages. The page limit does not include

1 exhibits, declarations, attachments, the table of contents, the table of authorities, or the
2 proof of service.

3
4 **(e) Application to file longer memorandum**

5
6 A party may apply to the court ex parte but with written notice of the application to the
7 other parties, at least 24 hours before the memorandum is due, for permission to file a
8 longer memorandum. The application must state reasons why the argument cannot be
9 made within the stated limit.

10
11 **(f) Format of longer memorandum**

12
13 A memorandum that exceeds 10 pages must include a table of contents and a table of
14 authorities. A memorandum that exceeds 15 pages must also include an opening
15 summary of argument.

16
17 **(g) Effect of filing an oversized memorandum**

18
19 A memorandum that exceeds the page limits of these rules must be filed and considered
20 in the same manner as a late-filed paper.

21
22 **(h) Pagination of memorandum**

23
24 (1) The pages of a memorandum in electronic form must be numbered
25 consecutively beginning with the first page and using only Arabic numerals
26 (e.g., 1, 2, 3). The page number need not appear on the first page.

27
28 (2) Notwithstanding any other rule, a memorandum in paper form that includes a
29 table of contents and a table of authorities must be paginated as follows:

30
31 (1A) The caption page or pages must not be numbered;

32
33 (2B) The pages of the tables must be numbered consecutively using lower-
34 case roman numerals starting on the first page of the tables; and

35
36 (3C) The pages of the text must be numbered consecutively using Arabic
37 numerals starting on the first page of the text.

38
39 **(i) Copies of authorities**

40
41 (1) A judge may require that if any authority other than California cases, statutes,
42 constitutional provisions, or state or local rules is cited, a copy of the
43 authority must be lodged with the papers that cite the authority. ~~and~~ If in

1 paper form, the authority must be tabbed or separated as required by rule
2 3.1110(f)(3). If in electronic form, the authority must be electronically
3 bookmarked or contain an index with hyperlinks as required by rule
4 3.1110(f)(4).
5

6 (2) If a California case is cited before the time it is published in the advance
7 sheets of the Official Reports, the party must include the title, case number,
8 date of decision, and, if from the Court of Appeal, district of the Court of
9 Appeal in which the case was decided. A judge may require that a copy of
10 that case must be lodged, ~~and~~ If in paper form, the copy must be tabbed or
11 separated as required by rule 3.1110(f)(3). If in electronic form, the copy
12 must be electronically bookmarked or contain an index with hyperlinks as
13 required by rule 3.1110(f)(4).
14

15 (3) Upon the request of a party to the action, any party citing any authority other
16 than California cases, statutes, constitutional provisions, or state or local rules
17 must promptly provide a copy of such authority to the requesting party.
18

19 **(j) Attachments**
20

21 To the extent practicable, all supporting memorandums and declarations must be attached
22 to the notice of motion.
23

24 **(k) Exhibit references**
25

26 All references to exhibits or declarations in supporting or opposing papers must reference
27 the number or letter of the exhibit, the specific page, and, if applicable, the paragraph or
28 line number.
29

30 **(l) Requests for judicial notice**
31

32 Any request for judicial notice must be made in a separate document listing the specific
33 items for which notice is requested and must comply with rule 3.1306(c).
34

35 **(m) Proposed orders or judgments**
36

37 If a proposed order or judgment is submitted, it must be lodged and served with the
38 moving papers but must not be attached to them. The requirements for proposed
39 orders, including the requirements for submitting proposed orders by electronic
40 means, are stated in rule 3.1312.
41

42 * * *
43

1 Chapter 5. Noticed Motions

2
3 * * *

4 **Rule 3.1302. Place and manner of filing**

5
6 **(a) Papers filed in clerk's office**

7
8 Unless otherwise provided by local rule or specified in a court's protocol for
9 electronic filing, all papers relating to a law and motion proceeding must be filed in
10 the clerk's office.

11
12 **(b) Requirements for lodged material**

13
14 Material lodged physically with the clerk must be accompanied by an addressed
15 envelope with sufficient postage for mailing the material. Material lodged
16 electronically must clearly specify the electronic address to which ~~the materials~~
17 ~~may be returned~~ a notice of deletion may be sent. After determination of the matter,
18 the clerk may mail or send the material if in paper form back to the party lodging it.
19 If the lodged material is in electronic form, the clerk may permanently delete it.
20 The clerk must send notice of the deletion to the party who lodged the material.

21
22 * * *

23 **Rule 3.1306. Evidence at hearing**

24
25 **(a) Restrictions on oral testimony**

26
27 Evidence received at a law and motion hearing must be by declaration or request
28 for judicial notice without testimony or cross-examination, unless the court orders
29 otherwise for good cause shown.

30
31 **(b) Request to present oral testimony**

32
33 A party seeking permission to introduce oral evidence, except for oral evidence in
34 rebuttal to oral evidence presented by the other party, must file, no later than three
35 court days before the hearing, a written statement stating the nature and extent of
36 the evidence proposed to be introduced and a reasonable time estimate for the
37 hearing. When the statement is filed less than five court days before the hearing, the
38 filing party must serve a copy on the other parties in a manner to assure delivery to
39 the other parties no later than two days before the hearing.

40
41 **(c) Judicial notice**

1 A party requesting judicial notice of material under Evidence Code sections 452 or
2 453 must provide the court and each party with a copy of the material. If the
3 material is part of a file in the court in which the matter is being heard, the party
4 must:

- 5
- 6 (1) Specify in writing the part of the court file sought to be judicially noticed;
7 and
8
- 9 (2) Make arrangements with the clerk to have the file in the courtroom or
10 electronically accessible to the court at the time of the hearing.

11

12 **Chapter 6. Particular Montions * * ***

13

14 **Article 6. Miscellaneous Motions**

15

16 * * *

17

18 **Rule 3.1362. Motion to be relieved as counsel**

19

20 **(a) Notice**

21

22 A notice of motion and motion to be relieved as counsel under Code of Civil
23 Procedure section 284(2) must be directed to the client and must be made on the
24 *Notice of Motion and Motion to Be Relieved as Counsel—Civil* (form MC-051).
25

26 **(b) Memorandum**

27

28 Notwithstanding any other rule of court, no memorandum is required to be filed or
29 served with a motion to be relieved as counsel.
30

31 **(c) Declaration**

32

33 The motion to be relieved as counsel must be accompanied by a declaration on the
34 *Declaration in Support of Attorney's Motion to Be Relieved as Counsel—Civil*
35 (form MC-052). The declaration must state in general terms and without
36 compromising the confidentiality of the attorney-client relationship why a motion
37 under Code of Civil Procedure section 284(2) is brought instead of filing a consent
38 under Code of Civil Procedure section 284(1).
39

40 **(d) Service**

41

1 The notice of motion and motion, the declaration, and the proposed order must be
2 served on the client and on all other parties who have appeared in the case. The
3 notice may be by personal service, electronic service, or mail.
4

5 (1) If the notice is served on the client by mail under Code of Civil Procedure
6 section 1013, it must be accompanied by a declaration stating facts showing
7 that either:
8

9 (~~1~~A) The service address is the current residence or business address of the
10 client; or
11

12 (~~2~~B) The service address is the last known residence or business address of
13 the client and the attorney has been unable to locate a more current
14 address after making reasonable efforts to do so within 30 days before
15 the filing of the motion to be relieved.
16

17 (2) If the notice is served on the client by electronic service under Code of Civil
18 Procedure section 1010.6 and rule 2.251, it must be accompanied by a
19 declaration stating that the electronic service address is the client's current
20 electronic service address.
21

22 As used in this rule, “current” means that the physical or electronic address was
23 confirmed within 30 days before the filing of the motion to be relieved. Merely
24 demonstrating that the notice was sent to the client’s last known address and was
25 not returned or no electronic delivery failure message was received is not, by itself,
26 sufficient to demonstrate that the address is current. If the service is by mail, Code
27 of Civil Procedure section 1011(b) applies.
28

29
30 (e) **Order**

31
32 The proposed order relieving counsel must be prepared on the *Order Granting*
33 *Attorney’s Motion to Be Relieved as Counsel—Civil* (form MC-053) and must be
34 lodged with the court with the moving papers. The order must specify all hearing
35 dates scheduled in the action or proceeding, including the date of trial, if known. If
36 no hearing date is presently scheduled, the court may set one and specify the date in
37 the order. After the order is signed, a copy of the signed order must be served on
38 the client and on all parties that have appeared in the case. The court may delay the
39 effective date of the order relieving counsel until proof of service of a copy of the
40 signed order on the client has been filed with the court.