



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

August 6, 2015

Action Requested

Please review for August 18 meeting

To

Court Technology Advisory Committee

Deadline

August 18, 2015

From

Rules and Policy Subcommittee
Joint Appellate Technology Subcommittee

Contact

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Subject

Public comments received in response to rules proposal to amend rules 2.251 and 8.71 (e-service)

Background

This spring, the Court Technology Advisory Committee (CTAC) and the Appellate Advisory Committee (AAC) recommended circulating for public comment a rules proposal that would amend rules 2.251 and 8.71 of the California Rules of Court to authorize electronic service on consenting courts. The rules proposal was circulated for public comment during the spring rules cycle, with the comment period ending on June 17, 2015.

The Joint Appellate Technology Subcommittee (JATS) and CTAC's Rules and Policy Subcommittee (RPS) reviewed the comments received in response to the Invitation to Comment during their meetings on June 30 and August 5, 2015, respectively. Both JATS and RPS propose that CTAC and AAC recommend the rules proposal be submitted to the Judicial Council for consideration at its October 27, 2015 meeting.

Recommendation

JATS and RPS propose that CTAC recommend that:

1. The Judicial Council add new subdivisions (j)(2) to rule 2.251 and (g)(2) to rule 8.71 that would authorize trial and appellate courts to consent to electronic service by either serving a notice on all parties or adopting a local rule; and
2. The Judicial Council make nonsubstantive amendments to subdivisions (a) and (c) of rule 8.71 that would make this rule more consistent with the language of trial court rule 2.251 and would consolidate provisions relating to the authorization for electronic service in the appellate courts.

A draft report to the Judicial Council is attached.

Discussion

Nine comments were received in response to the Invitation to Comment. Five commentators agreed with the proposal, and three agreed with the proposal if modified. Although the California Department of Child Support Services did not expressly indicate its position with respect to the proposal, it did state its general support of modernization efforts that would increase efficiencies with its justice partners, including rules that would allow parties to serve documents electronically on the courts.

Four specific modifications were proposed by the commentators; each is addressed in the draft report and the comment chart containing recommended responses from JATS and RPS. The subcommittees did not recommend any changes to the rules proposal in response to the comments.

Attachment

- Draft report to the Judicial Council with attachments (proposed amendments to rules 2.251 and 8.71 and comment chart with proposed responses from JATS and RPS)



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title

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

Agenda Item Type
Action Required

Effective Date
January 1, 2016

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 2.251 and
8.71

Date of Report
August 6, 2015

Recommended by

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

Contact

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Executive Summary

The Appellate Advisory Committee and the Information Technology Advisory Committee recommend amending rules 2.251 and 8.71 of the California Rules of Court to authorize electronic service on consenting courts. There is some ambiguity in the rules regarding whether electronic service is authorized not only by, but also on, a court. This rules proposal would add language to rules 2.251 and 8.71 to clarify that electronic service on a court is permissible under the rules.

Recommendation

The Appellate Advisory Committee and Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2016, amend rules 2.251 and 8.71 of the California Rules of Court to:

1. Add new subdivisions (j)(2) to rule 2.251 and (g)(2) to rule 8.71 that would authorize trial and appellate courts to consent to electronic service by either serving a notice on all parties or adopting a local rule; and
2. Make nonsubstantive amendments to subdivisions (a) and (c) of rule 8.71 that would make this rule more consistent with the language of trial court rule 2.251 and would consolidate provisions relating to the authorization for electronic service in the appellate courts.

Amended rules 2.251 and 8.71 are attached at pages 7–9.

Previous Council Action

The Judicial Council sponsored Senate Bill 367 in 1999. (Stats. 1999, ch. 514.) This legislation enacted Code of Civil Procedure section 1010.6, which authorizes the electronic filing and service of documents in the trial courts. It also directed the council to adopt uniform rules, consistent with the statute, for electronic filing and service. Effective January 1, 2003, the Judicial Council adopted rules establishing procedures for electronic filing and service. Relevant to this proposal, the rules provided that a trial court may electronically serve any notice, order, judgment, or other document prepared by the court in the same manner that parties may serve documents by electronic service.

The Judicial Council later co-sponsored SB 1274 (Stats. 2010, ch. 156), which amended Code of Civil Procedure section 1010.6 to recognize electronic service by a court of any notice, order, judgment, or other document. Although the bill introduced other substantive changes to the statute, this specific amendment placed the existing language in the rules into the statute for clarity.

The Judicial Council adopted rules, effective July 1, 2010, authorizing the Second District Court of Appeal to conduct a pilot project to test the use of electronic filing and service. Mirroring the provisions in the statute and trial court rules, these rules recognize electronic service by a court of any notice, order, opinion, or other document issued by the court. The scope of these appellate rules was extended, effective January 1, 2012, to all Courts of Appeal and to the California Supreme Court.

Rationale for Recommendation

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

There is some ambiguity as to whether the current rules authorize electronic service on a court. Rule 8.25(a), which generally addresses service of documents in appellate proceedings, requires that the parties serve documents “by any method permitted by the Code of Civil Procedure.” Code of Civil Procedure section 1010.6 (electronic service and filing in the trial courts), rule 2.250 (electronic service in the trial courts), and rule 8.70 (electronic filing and service in the appellate courts) all define “electronic service” as service of a document “*on a party or other person*” (italics added); they do not expressly provide for service on a court.

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

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

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

Electronic service authorized on consenting courts

The amendment would add a new paragraph (2) to rules 2.251(j) and 8.71(g), which currently address electronic service by a court. The initial paragraph of these new subdivisions is modeled on the language of current rules 2.251(e)(2) and 8.71(c)(2), which provide that a document may not be served on a nonparty unless that nonparty consents or electronic service is otherwise provided for by law or court order.¹ The draft of new 2.251(j)(2) and 8.71(g)(2) would similarly prohibit electronic service on a court without the court’s consent unless such service is provided for by law or court order.

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

¹ This rules proposal would relocate subdivision (c)(2) to new subdivision (a)(4), but would not amend its content.

Nonsubstantive amendments to rule 8.71

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

Comments

This rules proposal was circulated for public comment, with the comment period ending on June 17, 2015. Nine comments were received in response. Five commentators agreed with the proposal, and three agreed with the proposal if modified. Although the California Department of Child Support Services did not expressly indicate its position with respect to the proposal, it did state its general support of modernization efforts that would increase efficiencies with its justice partners, including rules that would allow parties to serve documents electronically on the courts. Each of four specific modifications proposed by the commentators is discussed below.

First, the Civil Unit Managers of the Superior Court of Orange County recommended adding a new subpart (C) to rule 2.25(g)(3) that would provide as follows:

The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions.

The Information Technology Advisory Committee (ITAC) declined to pursue the Civil Unit Managers' recommendation to amend subdivision (g) of rule 2.251. Rule 2.251(g) applies to all documents served by electronic notification and places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. Under rule 2.251(g)(3), the party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink, as recommended by the Civil Managers Unit, would effect a substantive rule change that is beyond the scope of this proposal and would require additional public comment.

In addition, ITAC declines to pursue this recommendation because the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is beyond the scope of this rules proposal to amend the trial court rules on public access to court records.

Second, Ms. Debbie Mochizuki, Supervising Attorney at the Fifth District Court of Appeal, objected to the limited number of means identified in rule 8.71(g)(2) for courts to indicate their consent to electronic service. She explained that the Court of Appeal and superior courts in its jurisdiction have reached an oral agreement whereby the superior courts have agreed to accept appellate decisions and orders transmitted electronically. The Appellate Advisory Committee (AAC) is sensitive to Ms. Mochizuki's concern about disrupting the oral agreement described in her comment. Fortunately, the amendment to rule 8.71 would not appear to affect the validity of that oral agreement. Because rule 8.267(a) requires only that the Court of Appeal clerk "send," not "serve," the court's orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g), which addresses electronic service, would not apply.

Ms. Mochizuki also explained that requiring the adoption of local rules would be unnecessary and time consuming where the court is not mandating electronic service, but only indicating its consent to accept electronic service. AAC is sympathetic to the burden imposed on the appellate courts in adopting local rules of court. Rule 1.6(9) defines "local rule" as "every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court." A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a "Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports" and that a "local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed." While acknowledging the burden imposed on appellate courts in adopting local rules of court, the AAC determined that it was outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption of such rules. Nevertheless, the committee may consider a proposal to lessen the burden on appellate courts in future rules cycles.

Third, the San Diego Bar Association recommended using the term "consent" in lieu of "accept" and "agrees to accept" in proposed new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71. The language in proposed new subdivisions mirrors subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71. Rules 2.251(b)(1) and 8.71(a)(2), which govern the consent by parties to electronic service, use the term "consent" and the phrase "agrees to accept" interchangeably. ITAC and AAC decline to pursue the bar association's recommendation where the language in rules 2.251(b)(1) and 8.71(a)(2) has not resulted in any known issues in the trial or appellate courts. The committees reasoned that any effort to clean up the language in rules 2.251 and 8.71 should be comprehensive in scope, rather than piecemeal.

Lastly, the State Bar's Committee on Appellate Courts (CAC) recommended encouraging superior courts and the Courts of Appeal to include information about electronic service on their websites. Specifically, CAC suggested requiring the Courts of Appeal to list on their websites the superior courts within their district that accept electronic service and the e-mail addresses where

those courts accept electronic service. This recommendation was not pursued as it is outside the scope of this rules proposal.

Alternatives Considered

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

Implementation Requirements, Costs, and Operational Impacts

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

Attachments

1. Cal. Rules of Court, rules 2.251 and 8.71, at pages 7–9
2. Comment chart, at pages 10–14

Rules 2.251 and 8.71 of the California Rules of Court are amended, effective January 1, 2016, to read:

1 **Rule 2.251. Electronic service**

2
3 (a)–(i) * * *

4
5 (j) **Electronic service by or on court**

6
7 (1) The court may electronically serve any notice, order, judgment, or other
8 document issued by the court in the same manner that parties may serve
9 documents by electronic service.

10
11 (2) A document may be electronically served on a court if the court consents to
12 electronic service or electronic service is otherwise provided for by law or
13 court order. A court indicates that it agrees to accept electronic service by:

14
15 (A) Serving a notice on all parties that the court accepts electronic service.
16 The notice must include the electronic service address at which the
17 court agrees to accept service; or

18
19 (B) Adopting a local rule stating that the court accepts electronic service.
20 The rule must indicate where to obtain the electronic service address at
21 which the court agrees to accept service.

22
23 **Rule 8.71. Electronic service**

24
25 (a) **Consent to Authorization for electronic service**

26
27 (1) A document may be electronically served under these rules:

28
29 (A) If electronic service is provided for by law or court order; or

30
31 (B) ~~When a~~ If the recipient agrees to accept electronic services as provided
32 by these rules and the document may be is otherwise authorized to be
33 served by mail, express mail, overnight delivery, or fax transmission,
34 electronic service of the document is permitted when authorized by
35 these rules.

36
37 (2)–(3) * * *

38
39 (4) A document may be electronically served on a nonparty if the nonparty
40 consents to electronic service or electronic service is otherwise provided for
41 by law or court order.

42
43 (b) **Maintenance of electronic service lists**

Rules 2.251 and 8.71 of the California Rules of Court are amended, effective January 1, 2016, to read:

1 When the court orders or permits electronic filing in a case, it must maintain and
2 make available electronically to the parties an electronic service list that contains
3 the parties' current electronic service addresses, as provided by the parties that have
4 filed electronically in the case.

5

6 **(c) Service by the parties**

7

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

11

12 (2) ~~A document may not be electronically served on a nonparty unless the~~
13 ~~nonparty consents to electronic service or electronic service is otherwise~~
14 ~~provided for by law or court order.~~

15

16 **(d)–(f) * * ***

17

18 **(g) Electronic service by or on court**

19

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

23

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

27

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

31

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

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Department of Child Support Services by Alisha A. Griffin, Director	NI	<p>The California Department of Child Support Services (DCSS) appreciates the opportunity to provide input, express our ideas, and experiences with respect to the proposal identified above.</p> <p>DCSS supports modernizing and increasing efficiencies with our justice partners including rules that would allow parties to serve documents electronically to the courts.</p>	DCSS’s support is noted.
2.	Civil Unit Managers Superior Court of Orange County by Deborah Coel, Operations Analyst	AM	<p>1. Position on Proposal Agree with the proposed changes with the following recommendation noted below in section 2.</p> <p>2. Recommendation: Amend California Rules of Court 2.251(g)</p> <p>The Court agrees with the proposal. However, the Court respectfully requests that the Judicial Council consider amending California Rules of Court 2.251(g) in the following ways:</p> <p>a. Add letter (C) after 2.251(g)(3)(B): “(C) The court designates a specific timeframe a hyperlink would be available for documents to be downloaded and each court maintains the original e-served document(s) for the public to obtain via the register of actions.”</p>	<p>The Civil Unit Managers’ support is noted.</p> <p>ITAC declines to pursue the recommendation to amend subdivision (g) of rule 2.251. This subdivision applies to all documents served by electronic notification. It places the responsibility on the party, not the court, for maintaining a hyperlink where the document may be viewed and downloaded. The party must maintain this hyperlink until either (1) all parties in the case have settled or the case has ended and the time for appeals has expired, or (2) if the party is no longer in the case, the party has provided notice to all other parties that it is no longer in the case and that they have 60 days to download any documents, and 60 days have passed after the notice was given. Requiring courts to share the burden of maintaining the hyperlink is a substantive change to the rule that is beyond the scope of this proposal and would require</p>

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

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	Commentator	Position	Comment	Committee Response
			<p>3. Request for Specific Comments</p> <p>a. Does the proposal appropriately address the stated purpose? The Court believes that this proposal addresses the intended purpose. Amending the Rules of Court will clarify when and how the Court may be served in the specific examples mentioned in the proposal.</p> <p>b. Would the proposal provide cost savings? If the Court elects to allow electronic service, an email inbox will need to be established to enable review of incoming service to the court. While the process functionality will be established, this won't necessarily be a cost savings for some courts.</p>	<p>additional public comment. It may be considered by ITAC in the future.</p> <p>In addition, the trial court rules separately address public access to court records in rules 2.500 et seq. These rules define which documents are accessible by the public and whether they are accessible remotely or only at the courthouse. Rule 2.507 defines the content required for electronically accessible registers of action. It is beyond the scope of this rules proposal to amend the trial court rules on public access to court records, but the recommendation may be considered by ITAC in the future.</p> <p>The Civil Managers Unit's comments are noted. The proposed rule amendment leaves it in the court's discretion whether to accept electronic service of documents on the court. In making this decision, each court may consider whether the costs outweigh the benefits.</p>

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
3.	Debbie Mochizuki, Supervising Attorney, Fifth Appellate District Court of Appeal	AM	<p>The proposed language of rule 8.71(g)(2) appears too restrictive in terms of how a court may indicate that it agrees to accept electronic service. For example, our appellate court has implemented mandatory e-filing. To maximize efficiencies to be gained with e-filing in the appellate court, our court reached out to the CEOs of the superior courts in our district and secured their oral agreement to accept electronic service of our orders and opinions. Neither of the options in rule 8.71(g)(2) as proposed take our approach into account.</p> <p>As the court of appeal is not a party, serving the notice described in rule 8.71(g)(2)(A) would not work for us. Also, the adoption of a local rule of court appears an unnecessary and time consuming requirement given that the superior court is simply giving its consent to receiving electronic service and it is NOT mandating electronic service. A local rule of court is ordinarily used to notice an additional requirement that a local court will impose over and above the state rules of court. It seems a court should be able to announce its willingness to accept electronic service in whatever manner it deems fit provided it includes the electronic service address at which it agrees to accept service.</p>	<p>AAC notes Ms. Mochizuki’s concerns, but concludes that this rules proposal would not impact the type of agreement identified in her comment. The scope of the proposed rule amendment is narrow in that it only applies to service on a court. Because rule 8.267(a) only requires that the Court of Appeal clerk <i>send</i> the court’s orders and opinions to the lower court or tribunal, the proposed amendment to rule 8.71(g) would not apply. The oral agreement described in the comment would remain valid regardless of whether the council adopts this rules proposal.</p> <p>AAC is sympathetic to the burden imposed on courts in adopting local rules of court. Rule 1.6(9) defines “local rule” as “every rule, regulation, order, policy, form or standard of general application adopted by a court to govern practice and procedure in that court.” A general policy adopted by the court of accepting electronic service would appear to fall within this definition of a local rule. Rule 10.1030, in turn, provides that a “Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports” and that a “local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed.” While acknowledging the burden imposed on courts in adopting local rules of court, the committees conclude that it is outside the scope of this rules proposal, as circulated, to amend either the existing definition of a local rule or the existing requirements relating to adoption</p>

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

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	Commentator	Position	Comment	Committee Response
				of such rules.
4.	Orange County Bar Association by Ashleigh Aitken, President	A	No specific comments provided.	The Orange County Bar Association’s support is noted.
5.	San Diego Bar Association Appellate Practice Session by Victoria E. Fuller, Chair	AM	<p>We agree with the Appellate Advisory Committee’s conclusion that there is some ambiguity as to whether the current rules authorize electronic service on a court. We also agree that the proposed revisions attempt to remove that ambiguity by expressly stating that electronic service on consenting courts is allowed under Rules 2.251 and 8.71. Express codification reduces doubt, removes uncertainty, and is a good thing.</p> <p>But we suggest a slight linguistic revision to maintain consistency within the proposed change. If the intention of the proposed change is to make it clear that electronic service on “consenting” courts is permitted, then the proposed changes should incorporate that expressly throughout. The current proposal uses language that varies between “consent,” “indicates that it agrees” and “accept,” which may lead to confusion among some practitioners.</p> <p>We therefore suggest the following revisions to proposed Rules 2.251(j)(2) and 8.71(g)(2), which address the manner in which a court consents to electronic service:</p>	<p>The San Diego Bar Association’s comments are noted.</p> <p>The language proposed for new subdivisions (j)(2) of rule 2.251 and (g)(2) of rule 8.71 mirrors the language in subdivisions (b)(1) of rule 2.251 and (a)(2) of rule 8.71, which govern consent by parties to electronic service. Rules 2.251(b)(1) and 8.71(a)(2) use the term “consent” and the phrase “agrees to accept” interchangeably. ITAC and AAC decline to pursue the bar association’s recommendation where the language in rules 2.251(b)(1) and 8.71(a)(2) has not resulted in any known issues in the trial or appellate courts. The committees reasoned that any effort to clean up the language in rules 2.251 and 8.71 should be comprehensive in scope, rather than piecemeal.</p>

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

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	Commentator	Position	Comment	Committee Response
			<p>(2) A document may be electronically served on a court if the court consents to electronic service or electronic service is otherwise provided for by law or court order. A court indicates that it agrees [consents] to accept service by:</p> <p>(A) Serving notice on all parties that the court accepts [consents to] electronic service. The notice must include the electronic service address at which the court agrees to [will] accept service; or</p> <p>(B) Adopting a local rule stating that the court accepts [consents to] electronic service. The rule must indicate where to obtain the electronic service address at which the court agrees to [will] accept service.</p>	
6.	The State Bar of California Committee on Appellate Courts by John Derrick, Chair	A	<p>The Committee supports this proposal, with a recommendation for implementation.</p> <p>In response to the specific requests for comments, the Committee believes that electronic service on the courts would unquestionably save time and costs for litigants in terms of printing and mailing service copies of briefs and other filings. The cost savings could be especially meaningful for the State, in aggregate, in criminal appeals handled by appointed attorneys, in which the State currently reimburses the attorneys for printing and mailing costs for service copies.</p>	The Committee on Appellate Court's (CAC) support is noted.

SPR15-02 Electronic Filing and Service: Authorization of Electronic Service on Trial and Appellate Courts

Amend Cal. Rules of Court, rules 2.251 and 8.71

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			In terms of implementation, the Committee recommends encouraging both superior courts and the Courts of Appeal to include information about electronic service on their websites. It would be particularly helpful for litigants to have the Court of Appeal websites in each District keep a current list of the superior courts in that District that accept electronic service, along with the individual email address for those courts, to indicate where documents should be served.	ITAC and AAC decline to pursue the CAC's recommendation because it is beyond the scope of this rules proposal. However, the committees may consider this recommendation in the future.
7.	Superior Court of Los Angeles County	A	No specific comments provided.	The superior court's support is noted.
8.	Superior Court of San Diego County by Michael Roddy, Executive Officer	A	Does the proposal appropriately address the stated purpose? Yes Would the proposal provide cost savings? Cost savings to the court of appeal on paper costs and minimal time savings for trial court appeals staff who would email the trial judge versus the current process of forwarding a hard copy.	The superior court's comments are noted.
9.	TCPJAC/CEAC Joint Rules Subcommittee	A	The JRS agrees that implementation of electronic service on a court needs to remain voluntary. The proposed language concerning a court's consent to electronic service provides additional clarity for the court. The proposed process for implementation of electronic service appears to be a very simple approach. The JRS concluded that this proposal will not lead to any significant implementation costs.	The subcommittee's support is noted.