

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title

Family Law: Signatures by Local Child Support Agencies on Electronically Filed Pleadings (Implementation of AB 1519)

Action Requested

Review and submit comments by January 22, 2016

Proposed Effective Date

July 1, 2016

Proposed Rules, Forms, Standards, or Statutes

Amend rule 2.257

Contact

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Proposed by

Family & Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Co-Chair
Hon. Mark A. Juhas, Co-Chair

Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Executive Summary

To implement Assembly Bill 1519, the Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee recommend amending California Rules of Court, rule 2.257, which governs the use of signatures on electronically filed documents. Effective January 1, 2016, AB 1519 amends Family Code section 17400(a)(3) to provide that local child support agencies (1) are required to maintain original signed pleadings only for the time period stated in Government Code section 68152(a); and (2) may maintain original signed pleadings by way of an electronic copy in the Statewide Automated Child Support System. AB 1519 requires the Judicial Council to develop implementing rules by July 1, 2016.

Background

Code of Civil Procedure section 1010.6 governs electronic filing and service in the trial courts and contains provisions regulating the use of signatures on electronically filed documents. Since its adoption in 1999, section 1010.6 has required that an attorney or person who electronically files a document signed under penalty of perjury (1) sign a printed form of the document prior to, or on the same day as, the date of filing; (2) maintain the printed document bearing the original signature; and (3) make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed. (Code Civ. Proc., § 1010.6(b)(2)(B).)

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Judicial Council adopted rule 2.257 to implement Code of Civil Procedure section 1010.6(b)(2). Rule 2.257(a) provides that the following conditions apply to electronically filed documents signed under penalty of perjury:

- (1) The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.
- (2) By electronically filing the document, the electronic filer certifies that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party.
- (3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.
- (4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.
- (5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

In enacting AB 1519 this year, the Legislature amended Family Code section 17400(a)(3) to provide as follows:

Notwithstanding any other law, effective July 1, 2016, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time proscribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, by July 1, 2016, shall develop rules to implement this subdivision.

In effect, AB 1519 carves out two exceptions to Code of Civil Procedure section 1010.6(b)(2)(B) for electronically filed pleadings that are signed by local child support agencies under penalty of perjury. First, whereas Code of Civil Procedure section 1010.6(b)(2)(B) requires that the printed document bearing the original signature be maintained in its paper form, Family Code section 17400(a)(3) authorizes local child support agencies to maintain original signed pleadings in electronic form through the Statewide Automated Child Support System.

Second, whereas Code of Civil Procedure section 1010.6(b)(2)(B) provides that the signed, printed form must be maintained and made available for review upon request without specifying when, if ever, the printed document may be destroyed, Family Code section 17400(a)(3) provides that local child support agencies need to maintain the original signed pleadings only for the statutory retention periods for trial court records stated in Government Code section 68152(a). The retention period, which begins upon final disposition of the case, is 30 years for court records in family cases; for adoption and parentage cases, the records are maintained permanently. (Gov. Code, § 68152(a)(7)–(9).)

The Proposal

To implement AB 1519, this rule proposal would amend subdivision (a)(2) of rule 2.257 to recognize the two limited exceptions for child support agencies stated in Family Code section 17400(a)(3). Subdivision (a)(2) currently provides that by electronically filing a document, the electronic filer certifies that he or she has complied with subdivision (a)(1), which requires that a printed form of the document be signed before filing, and that the original, signed document is available for inspection and copying at the request of the court or any other party.

This rule proposal would add a sentence to subdivision (a)(2) to recognize that “[l]ocal child support agencies may maintain original signed pleadings by way of an electronic copy in the Statewide Automated Child Support System and must maintain them only for the period of time stated in Government Code section 68152(a).”

Alternatives Considered

Because the proposed rule amendments are mandated by legislation, the advisory committees did not consider any alternatives.

Implementation Requirements, Costs, and Operational Impacts

The proposed rule amendments are directed toward local child support agencies and govern how and for how long they maintain original signed pleadings. It is not expected that the proposed amendments would result in any costs or operational impacts on the courts.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

Attachments and Links

1. Cal. Rules of Court, rule 2.257, at page 4–5

Rule 2.257 of the California Rules of Court would be amended, effective July 1, 2016, to read:

1 **Rule 2.257. Requirements for signatures on documents**

2
3 **(a) Documents signed under penalty of perjury**

4
5 When a document to be filed electronically provides for a signature under penalty
6 of perjury, the following applies:

- 7
8 (1) The document is deemed signed by the declarant if, before filing, the
9 declarant has signed a printed form of the document.
- 10
11 (2) By electronically filing the document, the electronic filer certifies that (1) has
12 been complied with and that the original, signed document is available for
13 inspection and copying at the request of the court or any other party. Local
14 child support agencies may maintain original signed pleadings by way of an
15 electronic copy in the Statewide Automated Child Support System and must
16 maintain them only for the period of time stated in Government Code section
17 68152(a).
- 18
19 (3) At any time after the document is filed, any other party may serve a demand
20 for production of the original signed document. The demand must be served
21 on all other parties but need not be filed with the court.
- 22
23 (4) Within five days of service of the demand under (3), the party on whom the
24 demand is made must make the original signed document available for
25 inspection and copying by all other parties.
- 26
27 (5) At any time after the document is filed, the court may order the filing party to
28 produce the original signed document in court for inspection and copying by
29 the court. The order must specify the date, time, and place for the production
30 and must be served on all parties.

31
32 **(b) Documents not signed under penalty of perjury**

33
34 If a document does not require a signature under penalty of perjury, the document
35 is deemed signed by the party if the document is filed electronically.

36
37 **(c) Documents requiring signatures of opposing parties**

38
39 When a document to be filed electronically, such as a stipulation, requires the
40 signatures of opposing parties, the following procedure applies:

- 41
42 (1) The party filing the document must obtain the signatures of all parties on a
43 printed form of the document.
- 44
45 (2) The party filing the document must maintain the original, signed document
46 and must make it available for inspection and copying as provided in (a)(2).

1 The court and any other party may demand production of the original signed
2 document in the manner provided in (a)(3)–(5).
3

- 4 (3) By electronically filing the document, the electronic filer indicates that all
5 parties have signed the document and that the filer has the signed original in
6 his or her possession.
7

8 **(d) Digital signature**
9

10 A party is not required to use a digital signature on an electronically filed
11 document.
12

13 **(e) Judicial signatures**
14

15 If a document requires a signature by a court or a judicial officer, the document
16 may be electronically signed in any manner permitted by law.

DRAFT