



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

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JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

MINUTES OF OPEN MEETING

June 30, 2016
3:00 PM – 4:30 PM

Teleconference

Advisory Body Members Present: Hon. Louis Mauro, Chair; Hon. Peter Siggins; Mr. Frank McGuire, Mr. Joseph Lane; Mr. Kevin Green

Advisory Body Members Absent: Ms. Kimberly Stewart and Mr. Don Willenburg

Others Present: Hon. Terence Bruiniers, Ms. Katherine Sher, Ms. Heather Anderson, Mr. Patrick O'Donnell and Ms. Julie Bagoye

OPEN SESSION

Call to Order and Roll Call

Justice Mauro called the meeting to order at 3:00 PM, and roll call was taken. He noted there were no public comments received prior to this meeting.

Approval of Minutes

The subcommittee reviewed and approved the minutes of the February 22, 2016, Joint Appellate Technology Subcommittee (JATS) meeting.

Item 1 Recommendations Regarding Proposals to Modernize Rules for E-Filing/E-Business

JATS considered the proposed revisions to the Rules Modernization proposal set out in Ms. Sher's memorandum dated June 27, 2016 and the draft revised proposed amended rules attached thereto. Ms. Sher noted that the rules portion of the proposal was proposed to be revised, following the public comment period, as follows: 1) to change the reference to rule 8.72(a) made in a number of Advisory Committee Comments to instead refer to rule 8.71(c), to reflect the changes made in the Appellate E-filing proposal; and 2) to correct a typographical error in rule 8.613(i). No changes were proposed, post-comment, to the amended and new forms.

Ms. Sher then summarized some of the comments received regarding this proposal. The Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee suggested that instead of creating new forms for proof of electronic service, proof of electronic service could be added to existing forms. Ms. Sher noted that this option was considered by JATS in developing the forms proposal, and the decision was that a separate form would be less confusing. Ms. Sher noted that the San Diego Superior Court had suggested that the new form should provide an option for when more than one

method of service is used for the same document, and noted that this was beyond the scope of what had been circulated for comment.

Ms. Sher further noted that comments from the Orange County Court staff had raised issues of whether implementation of new standards for the format of electronic records sent to an appellate court would impose a burden on trial courts. Ms. Sher noted that it remains optional for a trial court to send a record electronically. The Orange County court staff also suggested that more time might be needed for implementation, but recognized in making this comment that if sending the record electronically remains optional, more time should not be necessary.

JATS unanimously approved a motion to revise the proposal as shown in the draft rules attached to Ms. Sher's memorandum.

Item 2 Recommendations Regarding Proposals to Ensure Consistency Between Rules and Practices for Appellate E-Filing

JATS considered the comments received regarding the appellate e-filing proposal, and the potential revisions discussed in Ms. Sher's memorandum to JATS members dated June 27, 2016 and shown in the draft rules attached thereto.

With regard to rule 8.71, Ms. Sher noted the proposed revision, at the suggestion of the California Appellate Court Clerks Association (CACCA), to allow a self-represented party to agree to e-filing by e-filing a document. After discussion, JATS approved the proposed revised language.

Ms. Sher then noted that the Second District Court of Appeal had suggested that the language of rule 8.71(d) be revised to specifically require that a motion be filed when a party seeks to be excused from filing electronically, and that there were several possibilities as to how to approach this: leaving it up to each court, as in the proposal as circulated; requiring that the party file a motion, or requiring an application procedure. Mr. Lane stated that all of the appellate court clerks with whom he had discussed this issue had said that they used a motion procedure. Justice Mauro noted that the Third District is adopting a local rule requiring a motion. On further discussion, JATS members noted that at least one district, the First, has an application procedure. Ms. Anderson read language from rule 8.50, regarding applications, and 8.54, regarding motions, and discussed the differences. Justice Mauro suggested that given the differing practices in different districts, the rule should be left as circulated. After further discussion, JATS agreed to leave the language of rule 8.71(d) unchanged.

Mr. Lane asked why the requirement in rule 8.72(b), for each court to publish its e-filing requirements, was necessary, and whether requirements differed among the courts of appeal so as to make this necessary. Justice Mauro noted that there were local requirements, by local rule or order. Mr. Lane suggested the addition of the word "local" to the rule. Justice Mauro suggested leaving the rule unchanged, and JATS agreed to leave the language of the rule as it was circulated.

With regard to rule 8.73(b), Ms. Sher noted that the revised version of the rules in the meeting materials made the change suggested by the Family Violence Appellate Project, to state that a contract with an e-filing service provider should require, whenever possible, the service provider agree to waive a fee when the court so orders. JATS approved the revised language.

With regard to rules 8.73(d) and 8.77(a), JATS approved the revised language proposed by Justice Mauro requiring that the court “must arrange” to transmit confirmation of receipt of a document, and of the filing or rejection of a document, and made a further revision to move the words “to the electronic filer” in rule 8.73(d)(3) to go after the word “rejection”.

With regard to rule 8.74(b)(3), Ms. Sher noted that the Second District Court of Appeal had suggested adding the phrase “may be suppressed” but that this might make the language of the appellate rule on page numbering of electronic documents different from the language of the trial court rule – proposed without this phrase. Justice Bruiniers noted that the proposed language of the trial court rules could change. Justice Mauro noted that everyone understands what “may be suppressed” means. JATS approved the language for rule 8.74(b) shown in the revised rules in the meeting materials, including the phrase “may be suppressed.”

With regard to rule 8.77(a)(2)(C), Ms. Sher noted that CACCA had suggested deletion of this subdivision, as notice of fees assessed is not currently included in the confirmation of receipt sent to e-filers, and asked whether this change could be made as a minor, non-controversial change that did not need to be circulated for comment. Justice Mauro noted that if the language was left in, there was a question of whether it required something that might not be possible. Mr. O’Donnell questioned whether the provision was needed, as practitioners know what fee they have paid. Justice Mauro suggested that this was a change that could be made post-comment as a non-controversial change, and JATS agreed to the change.

With regard to rule 8.78(a), Ms. Sher noted the revision suggested by the Santa Clara County Bar Association Committee on Appellate Courts (SCCBAC), which replaces the proposed rule’s requirement that a party file and serve a notice to agree to electronic service with an “opt-out” procedure providing that a party can consent to e-service by electronically filing a document, but may opt-out of e-service by filing and serving a notice. JATS approved the revised language as shown in the meeting materials.

JATS members then discussed whether with the change to 8.78(a)(2) to allow a party to consent to e-service by e-filing a document, it still made sense to delete 8.78(a)(3) as proposed in the rules as circulated. JATS agreed that 8.78(a)(3) should be deleted, as proposed and as shown in the revised rules.

With regard to rule 8.204, JATS members discussed the comment by the Second District Court of Appeal, suggesting that the requirement for paper briefs be bound should be replaced with a

requirement that they be submitted unbound. Justice Mauro noted that the preference is for briefs to be submitted unbound to allow them to be scanned. Ms. Anderson asked whether, if a brief is submitted on paper, the court would want it to be bound to ensure that it stayed together. Ms. Sher asked whether the binding requirement applied to briefs submitted to the Supreme Court, which does not yet have e-filing. Ms. Anderson noted that under rule 8.520(b)(1), briefs filed in the Supreme Court must comply with relevant provisions of rule 8.204.

Ms. Anderson suggested that the language of the rule could be changed to require briefs to be submitted unbound, except where a local rule or court order provides otherwise. JATS approved this proposed change.

Finally, Ms. Sher noted that some commenters had questioned whether an effective date of January 1, 2017 would allow sufficient time to implement the changes. JATS agreed that the effective date should not be changed.

A D J O U R N M E N T

The meeting was adjourned at 4:10 PM.