



JUDICIAL COUNCIL
OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

www.courts.ca.gov/itac.htm
itac@jud.ca.gov

INFORMATION TECHNOLOGY ADVISORY COMMITTEE

RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

January 14, 2016
12:10 PM – 1:00 PM
Teleconference

Advisory Body Members Present: Justice Peter Siggins, Professor Dorothy Glancy, Judge Kyle Brodie, Judge Julie Culver, Judge Jack Lucky, Mr. Darrel Parker

Advisory Body Members Absent: Justice Louis Mauro, Mr. Don Willenburg

Others Present: Mr. Patrick O'Donnell, Ms. Tara Lundstrom

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 pm, and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the October 20, 2015, Rules and Policy Subcommittee meeting.

DISCUSSION AND ACTION ITEMS (ITEM 1)

Item 1

Proposed New Code of Civil Procedure Section 1013b and Amendments to Section 1010.6 (Action Required)

Action: *The subcommittee made tentative recommendations for this proposal, but deferred voting on final recommendations until a future meeting date.*

Ms. Tara Lundstrom introduced the proposal to add a new section 1013b to the Code of Civil Procedure to codify the trial court rule on proof of electronic service. She explained that the Code of Civil Procedure currently addresses only proof of mailing, not electronic service. Adding this new provision would assist the modernization efforts of other advisory committees, including the Probate and Mental Health Advisory Committee.

The subcommittee considered whether it would be possible to draft section 1013b without referencing section 1013a, but decided it would be better to leave as proposed. The subcommittee recommended adding the new section 1013b to Code of Civil Procedure.

Ms. Lundstrom then introduced the proposed amendments to the signature provisions in Code of Civil Procedure section 1010.6. Regarding signatures on e-filed documents that are not made under penalty of perjury, the subcommittee discussed whether this provision should be expanded to include persons other than attorneys and self-represented litigants. The subcommittee recommended amending that provision to state: "When a document is to be filed not under penalty of perjury, the document will be deemed to be signed by the person who makes that filing."

Regarding signatures on e-filed documents that are made under penalty of perjury, the subcommittee recommended amending section 1010.6 to authorize electronic signatures. It also recommended retaining but modifying the current provision as an alternative to electronic signatures: e-filers would still have the option of retaining the original signature, but would only be required to retain it for the time stated in Government Code section 68152 for the retention of court records.

Ms. Lundstrom introduced the proposed amendments to the effective date of mandatory and permissive e-filing. Mr. O'Donnell provided additional background information on the development of the statute and rules. The subcommittee first decided that the effective date of e-filing should be consistent and standardized statewide, regardless of whether e-filing was mandatory or permissive. The subcommittee members then discussed the benefits and drawbacks of a 5:00 pm versus a midnight cut-off time. The subcommittee decided to recommend that the cut-off time for e-filing should be 5:00 pm, and to ask for specific comments on this issue in the Invitation to Comment.

Lastly, the subcommittee decided to eliminate references to the Superior Court of Orange County's mandatory e-filing pilot project. The subcommittee decided to reconvene to review the proposed amendments before making a final recommendation to ITAC.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:00 PM.

Approved by the advisory body on _____.



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INFORMATION TECHNOLOGY ADVISORY COMMITTEE

RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

February 16, 2016
12:10 PM – 1:00 PM
Teleconference

Advisory Body Members Present: Justice Peter Siggins, Professor Dorothy Glancy, Judge Kyle Brodie, Judge Jackson Lucky, Justice Louis Mauro, Mr. Don Willenburg, Mr. Darrel Parker

Advisory Body Members Absent: Judge Julie Culver

Others Present: Mr. Patrick O'Donnell, Ms. Tara Lundstrom, Ms. Diana Glick

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 pm, and took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 1–2)

Item 1

Rules and Form Proposal to Implement Assembly Bill 879 (Action Required)

Action: *The subcommittee members voted to recommend the proposal to the Information Technology Advisory Committee, except for the advisory committee comment proposed by the Family and Juvenile Law Advisory Committee.*

Justice Siggins introduced the proposal to the subcommittee. Ms. Lundstrom then updated the subcommittee on the changes to the proposal that had been recommended by the Family and Juvenile Law Advisory Committee (FJLAC) in response to public comments. These changes included (1) revising the proposed language in rule 5.24(e)(2); (2) adding an advisory committee comment to that rule; (3) changing the new form EFS-005-JV/JV-141 from an optional to a mandatory form; and (4) making minor revisions to correct the form.

Several subcommittee members expressed concerns regarding the language proposed by the FJLAC for its advisory committee comment. The subcommittee members decided to notify FJLAC of their reservations; if FJLAC decided to retain the last two sentences of the advisory committee comment, the subcommittee members would recommend that the Information Technology Advisory Committee (ITAC) note its disagreement with the comment in the Judicial Council report. The subcommittee members then

voted to recommend the rules and form proposal to ITAC, with the exception of FJLAC's advisory committee comment, for its review and recommendation to the Rules and Projects Committee (RUPRO) and the Judicial Council Technology Committee (JCTC).

Item 2

Rules Proposal to Implement Assembly Bill 1519 (Action Required)

Action: *The subcommittee voted to recommend the proposal to the Information Technology Advisory Committee.*

Ms. Lundstrom introduced this proposal to the subcommittee. She then described the comment received by the Superior Court of Los Angeles County, as well as a proposed amendment to address that comment. Specifically, language would be added to the rule 2.257(a)(2) to clarify that "[i]f the local child support agency maintains an electronic copy of the original signed pleading in the statewide automated child support system, it may destroy the paper original."

The subcommittee unanimously voted to recommend the proposal, as modified, to ITAC for its review and recommendation to RUPRO and JCTC.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:00 PM.

Approved by the advisory body on _____.



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RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

March 4, 2016

12:10 PM – 1:00 PM

Teleconference

Advisory Body Members Present: Justice Peter Siggins, Judge Kyle Brodie, Judge Julie Culver, Justice Louis Mauro, Judge Jackson Lucky, Mr. Darrel Parker, Mr. Don Willenburg

Advisory Body Members Absent: Professor Dorothy Glancy

Others Present: Mr. Patrick O'Donnell, Ms. Tara Lundstrom, Ms. Diana Glick

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 pm, and took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 1 – 3)

Item 1

Legislative Proposal on E-Filing, E-Service, and E-Signatures (Action Required)

Action: *The subcommittee voted to recommend the proposal, as revised, to the Information Technology Advisory Committee (ITAC).*

Ms. Lundstrom explained that the proposal was returning to the subcommittee for its review after having been presented to the following advisory committees for their input: the Civil and Small Claims Advisory Committee, the Advisory Committee on Providing Access and Fairness, and the Family and Juvenile Law Advisory Committee. She then presented the proposed amendments in the meeting materials to the subcommittee, including the input received from the other advisory committees on the proposal.

The subcommittee discussed whether to propose a 5 PM or midnight cutoff time for determining the effective date for e-filing and e-service and decided, based in part on the input from the other advisory committees, to recommend midnight and ask for specific comment on this issue. To incorporate this recommendation the subcommittee recommended:

1. Revising proposed new subdivision (a)(5) to provide as follows: "Any document that is served electronically before midnight on a court day shall be deemed to have been served on that court

day, and any document that is served electronically after midnight on any court day shall be deemed to have been served on the next court day.”

2. Revising the proposed amendment to subdivision (b)(3) to provide: “Any document received electronically by the court before midnight on a court day shall be deemed to have filed on that court day, and any document that is received after midnight is deemed to have been filed on the next court day.”

The subcommittee also recommended revising new subdivision (d)(4) to refer to “unrepresented persons” instead of “unrepresented parties and other persons.” The subcommittee then voted to recommend the proposal, as revised, to ITAC.

Item 2

Legislative Proposal to Authorize E-Service in Probate Proceedings (Action Required)

Action: *The subcommittee voted to recommend the proposal, as revised, to ITAC.*

Ms. Lundstrom presented this proposal to the subcommittee. The subcommittee decided to revise the proposed amendment to Probate Code section 1215(c)(1) to provide that the notice or paper may be e-served on a party or other person “if the person has filed written consent to receive electronic service and provided an electronic service address.” The subcommittee then voted to recommend the proposal, as revised, to ITAC.

Item 3

Legislative Proposal to Authorize E-Service and E-Filing in Juvenile Proceedings (Action Required)

Action: *The subcommittee voted to recommend the proposal to ITAC.*

Ms. Lundstrom presented this proposal to the subcommittee. The subcommittee members discussed whether to provide further guidance in the statute or rules on the use of encryption to preserve and ensure the confidentiality of juvenile records. They concluded that this guidance would be best left for development in the rules. The subcommittee then voted to recommend the proposal to ITAC.

A D J O U R N M E N T

The meeting was adjourned at 1:00 PM.

Approved by the advisory body on ____.



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INFORMATION TECHNOLOGY ADVISORY COMMITTEE

RULES AND POLICY SUBCOMMITTEE

MINUTES OF OPEN MEETING

March 7, 2016

12:10 PM – 1:00 PM

Teleconference

Advisory Body Members Present: Justice Peter Siggins, Judge Kyle Brodie, Judge Julie Culver, Justice Louis Mauro, Judge Jackson Lucky, Mr. Darrel Parker, Mr. Don Willenburg

Advisory Body Members Absent: Professor Dorothy Glancy

Others Present: Mr. Patrick O'Donnell, Ms. Tara Lundstrom

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 pm, and took roll call.

DISCUSSION AND ACTION ITEMS (ITEMS 4 – 6)

Item 4

Legislative Proposal to Authorize Permissive E-Filing and E-Service in Criminal Proceedings (Action Required)

Action: *The subcommittee voted to recommend the proposal to the Information Technology Advisory Committee (ITAC).*

Ms. Lundstrom presented this proposal to the subcommittee. She explained that the Criminal Law Advisory Committee was working with the Judicial Council's Government Affairs office to introduce this minor, clarifying amendment into a bill this year; and that this proposal was intended to serve as a backup measure in case that effort was unsuccessful. The subcommittee voted to recommend the proposal to ITAC.

Item 5

Rules Modernization Project (Phase II) Rules Proposal (Action Required)

Action: *The subcommittee voted to recommend the proposal to the Information Technology Advisory Committee.*

Ms. Lundstrom presented an additional change to the rules proposal that had been recommended by the Civil and Small Claims Advisory Committee subsequent to the joint subcommittee meeting. The subcommittee agreed to recommend the change to rule 2.252(i) on paper courtesy copies to ITAC and to request specific comment on this rule. In addition, the subcommittee reviewed the proposed amendments to the rules in title 5 that had been recommended by the Family and Juvenile Law Advisory Committee. The subcommittee then voted to recommend the rules proposal to ITAC.

Item 6

Review Form Proposal for Online Traffic Payments

Ms. Lundstrom presented the Traffic Advisory Committee's (TAC) form proposal to the subcommittee for its input. The subcommittee suggested that TAC remove the reference to "Attachment 2" regarding electronic notices on the form because that attachment had not been made available. Recognizing that the reference had been added to mirror the Superior Court of Los Angeles County's local form, the subcommittee questioned whether the reference was necessary and, if so, whether the information on electronic notices should be provided on a statewide basis.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:00 PM.

Approved by the advisory body on _____.



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

| | |
|---|---|
| Date July 5, 2016 | Action Requested Please review before July 8 meeting |
| To Rules and Policy Subcommittee | Deadline July 8, 2016 |
| From Diana Glick, Attorney Center for Families, Children & the Courts | Contact Diana Glick 916-643-7012 phone diana.glick@jud.ca.gov |
| Subject Phase II of the Rules Modernization Project: proposed rule amendments to title 5 Family Rules | |

Overview

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 Family and Juvenile Law Advisory Committee (“FJLAC”).

The Rules Modernization Project is being carried out in two phases. Last year, ITAC, FJLAC, 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, the advisory committees are undertaking phase II, which involves a more in-depth examination of any statutes and rules that may hinder e-business practices.

On January 28, 2016, FJLAC recommended that proposed amendments to four rules in title 5 be circulated for public comment. The changes would insert a reference to the Judicial Council form for electronic proof of service, and remove references to “mail.”

Invitation to Comment and Subsequent FJLAC Review

This rules proposal circulated for comment as part of the spring 2016 invitation-to-comment cycle, from April 15 to June 14, 2016, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, legal services attorneys, social workers, probation officers, Court Appointed Special Advocate programs, and other juvenile and family law professionals.

At the close of the comment period, no comments had been received regarding the proposed changes to title 5. FJLAC was advised of the lack of comments to the proposed amendments to title 5 and given an additional opportunity to review the changes and express any concerns. On June 30, 2016, FJLAC met and recommended the proposed amendments.

Subcommittee's Task

The proposed amendments to title 5 will be combined with the proposed amendments to titles 2 and 3 that will be reviewed by the subcommittee during its July 12 meeting with the Civil and Small Claim's Advisory Committee's Unlimited Case and Complex Litigation Subcommittee.

During the July 8 meeting, the subcommittee is tasked with reviewing only the proposed amendments to title 5 and:

- Advising ITAC to recommend that the Judicial Council adopt all or part of the proposed amendments to title 5;
- Rejecting the proposed amendments to title 5; or
- Asking staff or group members for further information and analysis.

Attachment

- Proposed amendments to title 5

Rules 5.66, 5.380, 5.390, and 5.392 of the California Rules of Court would be amended, effective January 1, 2017, to read:

1 **Rule 5.66. Proof of service**

2
3 **(a) Requirements to file proof of service**

4
5 Parties must file with the court a completed form to prove that the other party
6 received the petition or complaint or response to petition or complaint.

7
8 **(b) Methods of proof of service**

9
10 (1) The proof of service of summons may be on a form approved by the Judicial
11 Council or a document or pleading containing the same information required
12 in *Proof of Service of Summons* (form FL-115).

13
14 (2) The proof of service of response to petition or complaint may be on a form
15 approved by the Judicial Council or a document or pleading containing the
16 same information required in *Proof of Service by Mail* (form FL-335)-~~or~~,
17 *Proof of Personal Service* (form FL-330), or *Proof of Electronic Service*
18 (form POS-050/EFS-050).

19
20 **Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention**
21 **Act cases**

22
23 **(a)–(b) * * ***

24
25 **(c) Notice of Entry of Judgment**

26
27 When an *Agreement and Judgment of Parentage* (form DV-180) is filed, the court
28 must ~~mail~~ serve a *Notice of Entry of Judgment* (form FL-190) on the parties.

29
30 **Rule 5.390. Bifurcation of issues**

31
32 **(a)–(d) * * ***

33
34 **(e) Notice by clerk**

35
36 Within 10 days after the order deciding the bifurcated issue and any statement of
37 decision under rule 3.1591 have been filed, the clerk must ~~mail~~ serve copies to the
38 parties and file a certificate of mailing or a certificate of electronic service.

39
40 **Rule 5.392. Interlocutory appeals**

41
42 **(a) * * ***

43
44 **(b) Certificate of probable cause for appeal**

45

- 1 (1) The order deciding the bifurcated issue may include an order certifying that
2 there is probable cause for immediate appellate review of the issue.
3
- 4 (2) If it was not in the order, within 10 days after the clerk ~~mails~~ serves the order
5 deciding the bifurcated issue, a party may notice a motion asking the court to
6 certify that there is probable cause for immediate appellate review of the
7 order. The motion must be heard within 30 days after the order deciding the
8 bifurcated issue is ~~mailed~~ served.
9
- 10 (3) The clerk must promptly ~~mail~~ serve notice of the decision on the motion to
11 the parties. If the motion is not determined within 40 days after ~~mailing of~~
12 servicing the order on the bifurcated issue, it is deemed granted on the grounds
13 stated in the motion.
14

15 (c) * * *

16
17 **(d) Motion to appeal**
18

- 19 (1) If the certificate is granted, a party may, within 15 days after the ~~mailing of~~
20 court serves the notice of the order granting it, serve and file in the Court of
21 Appeal a motion to appeal the decision on the bifurcated issue. On ex parte
22 application served and filed within 15 days, the Court of Appeal or the trial
23 court may extend the time for filing the motion to appeal by not more than an
24 additional 20 days.
25

26 (2)–(6) * * *

27
28 (e) * * *

29
30 **(f) Proceedings if motion to appeal is granted**
31

- 32 (1) If the motion to appeal is granted, the moving party is deemed an appellant,
33 and the rules governing other civil appeals apply except as provided in this
34 rule.
35
- 36 (2) The partial record filed with the motion will be considered the record for the
37 appeal unless, within 10 days from the date notice of the grant of the motion
38 is ~~mailed~~ served, a party notifies the Court of Appeal of additional portions of
39 the record that are needed for the full consideration of the appeal.
40

41 (3)–(4) * * *

42
43 **(g)–(h)** * * *
44



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MEMORANDUM

Date

July 5, 2016

Action Requested

Please review by July 8 meeting

To

Rules and Policy Subcommittee

Deadline

July 8, 2016

From

Tara Lundstrom, Attorney
Criminal Justice Services

Contact

Tara Lundstrom
415-865-7995 phone
tara.lundstrom@jud.ca.gov

Subject

Legislative Proposal on E-Filing, E-Service,
and E-Signatures

Background

This spring, the Information Technology Advisory Committee (ITAC) circulated for public comment a legislative proposal that would amend the Code of Civil Procedure provisions governing e-filing, e-service, and e-signatures. Specifically, this legislative proposal would (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, (4) clarify the application of section 1010.6's electronic service provisions in sections 664.5 and 1011, and (5) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service.

Fourteen comments were submitted in response to the Invitation to Comment. To facilitate the subcommittee's review of the comments and discussion, the attached materials include the proposed amendments with drafter's notes immediately following each proposed amendment

that received public comment. The drafter's notes list the public comments received in response to the proposed amendment and provide analysis by staff.

Next, the Civil and Small Claims Advisory Committee will provide input on this proposal during their July 28 meeting. It will then be reviewed by ITAC during its August 1 meeting for recommendation to the Policy Coordination and Liaison Committee in October.

Subcommittee's Task

The subcommittee is tasked with reviewing the comments and:

- Advising ITAC to recommend that the Judicial Council sponsor all or part of the proposal;
- Rejecting the proposal; or
- Asking staff or group members for further information and analysis.

Attachments

1. Proposed new section 1013b and proposed amendments to Code of Civil Procedure sections 664.5, 1010.6, and 1011 with drafter's notes
2. Comment chart

Section 1013b of the Code of Civil Procedure would be enacted and sections 664.5, 1010.6, and 1011 would be amended, effective January 1, 2018, to read:

1 **§ 664.5.**
2

3 (a) In any contested action or special proceeding other than a small claims action or an
4 action or proceeding in which a prevailing party is not represented by counsel, the party
5 submitting an order or judgment for entry shall prepare and ~~mail~~ serve a copy of the
6 notice of entry of judgment to all parties who have appeared in the action or proceeding
7 and shall file with the court the original notice of entry of judgment together with the
8 proof of service ~~by mail~~. This subdivision does not apply in a proceeding for dissolution
9 of marriage, for nullity of marriage, or for legal separation.

10
11 (b) Promptly upon entry of judgment in a contested action or special proceeding in which
12 a prevailing party is not represented by counsel, the clerk of the court shall ~~mail~~ serve
13 notice of entry of judgment to all parties who have appeared in the action or special
14 proceeding and shall execute a certificate of such ~~mailing~~ service and place it in the
15 court's file in the cause.

16
17 (c) * * *

18
19 (d) Upon order of the court in any action or special proceeding, the clerk shall ~~mail~~ serve
20 notice of entry of any judgment or ruling, whether or not appealable.

21
22 (e) The Judicial Council shall, ~~by January 1, 1999, adopt a rule of court for the purposes~~
23 ~~of providing~~ provide by rule of court that, upon entry of judgment in a contested action or
24 special proceeding in which a state statute or regulation has been declared
25 unconstitutional by the court, the Attorney General is promptly notified of the judgment
26 and that a certificate of that ~~mailing~~ service is placed in the court's file in the cause.

27
28 ***Drafter's Note:** The following comments were received in response to the proposed*
29 *amendment to Code of Civil Procedure section 664.5:*

- 30
31 • [Mark W. Lomax, Attorney](#): "I strongly support amending C.C.P. section 664.5 to
32 substitute "serve" for "mail" because of a conflict between section 664.5 and the
33 California Rules of Court. Under C.R.C. rules 8.104(a)(2) (unlimited cases) and
34 8.822(a)(2) (limited cases), any manner of service of notice of entry of judgment
35 permitted by the Code of Civil Procedure, including electronic service when
36 permitted under C.C.P. section 1010.6 and C.R.C. rules 2.250-2.261, is sufficient
37 to trigger the running of the time to file a notice of appeal. Rules 8.104(a)(2) and
38 8.822(a)(2) conflict with C.C.P. section 664.5, which requires a party or the clerk
39 to "mail" (not "serve") notice of entry of judgment."
40 • [State Bar Committee on Administration of Justice](#): "CAJ agrees that the proposed
41 amendments to sections 664.5 and 1011 to reference "service" instead of "mail"
42 are a necessary update to the language, and agrees that the recognition of

1 electronic service as a permissible method of service in section 1011 should be
2 added as proposed.”

3
4 **§ 1010.6.**

5
6 (a) A document may be served electronically in an action filed with the court as provided
7 in this section, in accordance with rules adopted pursuant to subdivision (e).

8
9 (1) For purposes of this section:

10
11 (A) “Electronic service” means service of a document, on a party or other person, by
12 either electronic transmission or electronic notification. Electronic service may be
13 performed directly by a party or other person, by an agent of a party or other person,
14 including the party’s or other person’s attorney, or through an electronic filing service
15 provider.

16
17 (B) “Electronic transmission” means the transmission of a document by electronic means
18 to the electronic service address at or through which a party or other person has
19 authorized electronic service.

20
21 (C) “Electronic notification” means the notification of the party or other person that a
22 document is served by sending an electronic message to the electronic address at or
23 through which the party or other person has authorized electronic service, specifying the
24 exact name of the document served, and providing a hyperlink at which the served
25 document may be viewed and downloaded.

26
27 (2) If a document may be served by mail, express mail, overnight delivery, or facsimile
28 transmission, electronic service of the document is authorized when a party or other
29 person has agreed to accept service electronically in that action or when a court has
30 ordered electronic service on a represented party or other *represented* person under
31 subdivision (c) or (d).

32
33 (3) In any action in which a party or other person has agreed to accept electronic service
34 under paragraph (2), or in which the court has ordered electronic service on a represented
35 party or other *represented* person under subdivision (c) or (d), the court may
36 electronically serve any document issued by the court that is not required to be personally
37 served in the same manner that parties electronically serve documents. The electronic
38 service of documents by the court shall have the same legal effect as service by mail,
39 except as provided in paragraph (4).

40
41 *Drafter’s Note: The following comments were received in response to the proposed*
42 *amendments to Code of Civil Procedure section 1010.6(a)(1), (2) and (3):*

- 1
- 2 • Orange County Bar Association: “CCP Section 1010.6(a) authorizes service by
- 3 electronic means. Specifically, 1010.6(a)(2) addresses acceptance of electronic
- 4 service, and 1010.6(a)(3) allows the court to serve its documents electronically.
- 5 The proposed amendments to both of these provisions would include “other
- 6 person[s].” The definitions at 1010.6(a)(1)(A) as proposed, and currently (B) and
- 7 (C) mention “other person,” but provide no guidance. For purposes of
- 8 clarification, it is suggested that the language of the section or of the Advisory
- 9 Committee Comments, indicate who is contemplated as an “other person.” It is
- 10 believed this clarification is of increased importance, given subsequent provisions
- 11 of the section dealing with court-ordered electronic service.

12 Further, subdivisions (a)(1)(B) and (C) indicate that “a party or other person” has

13 authorized electronic service. This appears consistent with the proposed

14 language for inclusion in 1010.6(a)(2) and (3) where either a party or other

15 person has agreed to electronic service, but not where the court has ordered

16 such service. It is suggested thought be given as to whether the use of

17 “authorized” is accurate or desirable in subdivisions (a)(1)(B) and (C).

18 Additionally, the discussion of these particular amendments notes, at page 5 of

19 the proposal, that the mandatory electronic service imposed by 1010.6(a)(2) and

20 (3) would apply, “to parties and other persons only if they are represented.” This

21 is not clear from the proposed language. To avoid confusion, it is suggested that

22 the word “represented” be inserted before “other person” in the respective

23 provisions providing for court-ordered electronic service.

24 ...

25 1 - For the reasons set forth above, the proposal does not address the stated

26 purpose. Further, there is concern with the inconsistencies posed by the

27 provisions proposed for codification and CRC Rule 2.251.

28 Specifically, the proposed language at 1010.6(a)(2) and (3) leads a party to

29 expect either an agreement or a court order before they would be subject to

30 mandatory electronic service. This, however, is not the case per Rule

31 2.251(b)(1)(B) which provides that the act of electronically filing any document

32 with the court is evidence that the party has agreed to accept such service. This

33 has proven to be an unhappy trap for litigants and their counsel in litigation

34 brought in the Orange County courts where electronic filing is mandatory. These

35 proposals are made to facilitate and encourage greater use of electronic filing.

36 Accordingly, without some acknowledgment of these inconsistencies and

37 attendant changes to the provisions of the code section or the Rule, this will

38 continue to be a potential trap, growing in parallel with electronic filings.”

39 *The statute currently recognizes in (a)(1)(A), (B), and (C) that a document may be e-*

40 *served on not only a party but also on an “other person.” The proposed amendment*

41 *would recognize that a person other than a party may also e-serve documents. It is*

1 *intended to recognize that there may be a number of interested persons involved in*
2 *certain types of court proceedings (e.g., probate and juvenile), who do not technically*
3 *qualify as parties. Of note, two legislative proposals that were also circulated this spring*
4 *would allow for permissive e-service on and by non-parties in probate and juvenile*
5 *proceedings. Although it would be helpful to provide clarification in the council report,*
6 *staff does not recommend adding clarification into the statute. It would be difficult to*
7 *identify the full range of non-parties that might be involved in the different types of*
8 *proceedings (e.g., grandparents, siblings, caregivers, other adult relatives, etc. in*
9 *juvenile cases), and advisory committee comments may not be added to statutes.*

10
11 *In response to the comment, staff do propose amending the proposal to clarify that*
12 *courts may only order e-service on “other persons” if they are represented. This*
13 *recommendation is incorporated into the proposal above (with the added language in*
14 *bold and italics for ease of reference).*

15
16 *Lastly, because these proposed amendments would not go into effect until January 1,*
17 *2018, any implementing rule amendments, including amendments to rule 2.251, would*
18 *not be circulated for public comment until the spring 2017 cycle. At that time, the*
19 *subcommittee might want to revisit rule 2.251(b)(1)(B), which currently provides that*
20 *“[t]he act of e-filing is evidence that the party agrees to accept service at the electronic*
21 *service address the party has furnished to the court under rule 2.256(a)(4).” Staff would*
22 *note that this rule expressly does not apply to self-represented litigants who must*
23 *provide separate affirmative consent to both e-filing and e-service. (See Cal. Rules of*
24 *Court, rule 2.251(b)(1)(B) [“This subparagraph (B) does not apply to self-represented*
25 *parties; they must affirmatively consent to electronic service under subparagraph (A)”].)*

26
27 (4) * * *

28
29 (5) Any document that is served electronically before midnight on a court day shall be
30 deemed to have been served on that court day, and any document that is served
31 electronically after midnight on any court day shall be deemed to have been served on the
32 next court day.

33
34 **Drafter’s Note:** *The following comments were received in response to the proposal to*
35 *amend the effective date of e-service and e-filing in Code of Civil Procedure section*
36 *1010.6(a)(5) (above) and (b)(3) (below).*

- 37
38 • Laurel Halbany, MRHFM LLC: “The proposed changes to electronic service rules
39 should retain a filing and service deadline of "close of business" (that is, 5:00
40 p.m.) for a document to be considered timely filed and served that court day.
41 Changing the deadline to "before midnight" invites gamesmanship and will, in
42 effect, eliminate a full day from the required time of service. Vendors such as

1 LexisNexis allow automated service, such that a document may be uploaded with
2 the direction that it is automatically served at a particular time - for example, that
3 a document uploaded at 4:45 p.m. not actually be served and available to
4 opposing parties until just before midnight. While it is not uncommon for
5 attorneys to work somewhat later than 5:00 p.m., it is far less common to be
6 working at midnight. Thus, parties have every incentive to delay service until
7 close to midnight, depriving their opponents of additional time to review and
8 respond to document served.

9 Additionally, the proposal is silent as to the timeliness of documents served
10 precisely at midnight.”

- 11 • Lisa (unknown affiliation): “I feel that the filing deadline should be restricted to
12 5:00 p.m. Support staff should not have to bear the burden of working until
13 midnight to pick up the slack for attorneys that wait until the last minute to draft
14 and/or make revisions.”¹
- 15 • Orange County Bar Association: “Section 1010.6(a)(5) and (b)(3) apply to the
16 effective dates of service and filing, respectively. As written, the proposed
17 language is silent as to service or filing made at midnight. Further, in both
18 instances, the proposed language uses the concept of a court day. In connection
19 with service, this poses a problem as service, traditionally, may be made on any
20 day. As to filing, this could pose a problem were the language interpreted as
21 allowing filing only on a court day, that is, one might dispute not the effective date
22 of filing, but the very effectiveness of filing.
23 For these reasons, it is suggested that a version of the language of the Orange
24 County Superior Court pilot program as to date of filing, be adopted as to both
25 service and filing. Assuming the concept of “court day” is retained in connection
26 with service, the following is provided for consideration: Electronically [served –
27 in the case of 1010.6(a)(5)] [filed – in the case of 1010.6(b)(3)] documents
28 [served] [filed] prior to midnight on a court day will be deemed [served] [filed] as
29 of that day. Filing occurs at the time the document is received by the court and a
30 confirmation of receipt is created. Any document electronically [served] [filed] at
31 or after midnight, or filed on a noncourt day, will be deemed [served] [filed] on the
32 next court day.

33 ...

34 It is urged that, after the proposed amendments are finalized, the forgoing
35 provisions of Rule 2.251, together with other of its provisions such as (h)(4)

¹ Staff note that superior court staff would not be on site to process e-filed documents that are filed outside of normal court hours. Instead, the proposed amendment would allow staff to process those documents the following day during normal court hours, but they would be deemed filed on the court day when they were received by the court.

1 utilizing “close of business,” be reviewed to avoid conflicts with relevant statutes
2 and ensure consistency in this area.^[2]

3 2- CCP Section 1010.6(a)(5) and (b)(3) should provide that documents
4 electronically served and filed up until midnight be deemed served or filed on that
5 day. Please see comments above in the general discussion as to proposed
6 language, time, and ‘court day.’”

- 7 • State Bar Committee on Administration of Justice: “CAJ agrees that the
8 amendments to section 1010.6 are necessary to provide a consistent, effective
9 date of filing, so that any document received electronically by the court before
10 midnight on a court day shall be deemed to have been filed on that court day,
11 and any document received after midnight is deemed to have been filed on the
12 next court day. CAJ believes this is more clear than the current requirement that
13 documents be received “by the close of business” which may be 5:00 p.m., or
14 earlier, and is often changing due to budget considerations of the courts who are
15 limiting filing counter times.

16 ...

17 CAJ agrees that documents electronically filed and served up until midnight
18 should be deemed filed or served on that day. CAJ discussed an alternative 5:00
19 p.m. cut-off time for electronic filing and electronic service. In discussing this,
20 members of CAJ agreed that a midnight deadline promotes more conformity and
21 consistency. Members referenced the Los Angeles County and Orange County
22 e-filing systems, as well as the federal filing systems, which allow for a midnight
23 deadline for e-filing citing their efficiency. Additionally, members cited the
24 convenience factor of being able to file documents after standard business hours,
25 especially for self-represented litigants who may need to be at work during
26 ordinary court hours, and solo/small firm practitioners. Finally, members of CAJ
27 placed significance on the fact that any risk of purported “abuse” of midnight filing
28 deadlines is mitigated by the extended two court days allotted for electronic
29 service presently under Code of Civil Procedure Section 1010.6(a)(4), which
30 remains unchanged in the proposal.”

- 31 • State Bar’s Standing Committee on the Delivery of Legal Services: “SCDLS
32 believes midnight should be the cutoff time.”
- 33 • Superior Court of Los Angeles County: “With regard to the time deadline for
34 electronic filing, we suggest that the views of the attorneys and advocates for
35 self-represented litigants would be most important.”

36 *Midnight versus 5:00 p.m. cut-off time: The Invitation for Comment specifically requested*
37 *comment on whether the cut-off time for the effective date of e-filing and e-service*

² Because any amendments would not go into effect until January 1, 2018, an implementing rules proposal would be circulated during the spring 2017 cycle.

1 should be 5:00 p.m or midnight. The commentators were evenly divided: two State Bar
2 committees supported the recommended midnight cut-off time, whereas an attorney and
3 unaffiliated member of the public supported the 5:00 p.m. option. Although one attorney
4 expressed concern about the gamesmanship of litigants who might wait until right before
5 the midnight deadline to e-serve documents, the State Bar's Committee on the
6 Administration of Justice was not troubled by this risk because deadlines are extended
7 by two court days for e-served documents. In light of the comments received, the
8 subcommittees should decide whether to recommend that the cut-off time for the
9 effective date of e-filing and e-service be midnight or 5:00 p.m.

10 E-filing at midnight and on non-court days: Several commentators requested that the
11 legislation address documents that are e-served and e-filed at midnight. Although
12 committee member previously raised questions about whether midnight exists, it seems
13 that it might be helpful for litigants and the courts to state what should happen if the
14 document is e-served or e-filed at 12:00 a.m., not 11:59 p.m.

15 In addition, the Orange County Bar Association noted that the proposed amendment did
16 not address the effective date for e-filing and e-serving documents on non-court days.
17 Rule 1.20(a) provides this guidance on the effective date of filing: "Unless otherwise
18 provided, a document is deemed filed on the date it is received by the court clerk." A
19 document electronically filed on a non-court day would not be received by the court clerk
20 until the next court day. The statute would state an exception for documents that are
21 electronically filed on a court day, but are filed after the filing counter has closed. Should
22 the statute also state an exception for documents that are filed on a non-court day?

23 If the subcommittee decides to incorporate both suggestions from the comments, staff
24 propose amending section 1010.6(a)(5) as follows:

25 (a)(5) "Any document that is served electronically before midnight on a court day shall be
26 deemed to have been served on that court day. Any document served on or after
27 midnight or served on a non-court day shall be deemed to have been served on the next
28 court day."

29 Section 1010.6(b)(3) would be amended as follows:

30 (b)(3) Any document that is electronically filed with the received electronically by the
31 court after the close of business on any day shall be before midnight on a court day shall
32 be deemed to have been filed on that court day. Any document that is received
33 electronically on or after midnight or on a non-court day is deemed to have been filed on
34 the next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or
35 the time at which the court would not accept filing at the court's filing counter, whichever
36 is earlier."

37
38 (b) A trial court may adopt local rules permitting electronic filing of documents, subject
39 to rules adopted pursuant to subdivision (e) and the following conditions:
40

1 (1) * * *

2
3 (2)(A) When a document to be filed requires ~~the~~ a signature, not under penalty of perjury,
4 ~~of an attorney or a self-represented party~~, the document shall be deemed to have been
5 signed by ~~that attorney or self-represented party~~ the person filing if filed electronically.

6
7 (B) When a document to be filed requires the signature, under penalty of perjury, of any
8 person, the document shall be deemed to have been signed by that person if filed
9 electronically and if either of the following conditions is satisfied:

10
11 (i) That person has signed a printed form of the document ~~has been signed by that person~~
12 prior to, or on the same day as, the date of filing. The attorney or person filing the
13 document represents, by the act of filing, that the declarant has complied with this
14 section. The attorney or person filing the document shall maintain the printed form of the
15 document bearing the original signature until final disposition of the case, as defined in
16 subdivision (c) of Government Code section 68151, and make it available for review and
17 copying upon the request of the court or any party to the action or proceeding in which it
18 is filed.

19
20 (ii) That person has signed the document using a computer or other technology in
21 accordance with procedures, standards, and guidelines established by the Judicial Council
22 pursuant to this section.

23
24 *Drafter's Note: The following comments were received in response to this proposed*
25 *amendment to Code of Civil Procedure section 1010.6(b)(2):*

- 26
27 • California Department of Child Support Services: "DCSS has reviewed LEG16-10
28 entitled Technology: Electronic Filing, Service, and Signature, and is supportive
29 of the changes JCC has proposed. The JCC proposals address much of what
30 this department tried to address with AB 1519, namely the requirement to keep
31 an original wet signature on a document signed under penalty of perjury
32 indefinitely (CCP 1010.6). The fact that your proposal seeks to amend that
33 section to permit these documents be signed by means of electronic signature is
34 a huge step forward so long as it does not run afoul of Family Code Section
35 17400(b)(3) or the resulting Judicial Council Rules of Court, which states:

36 Notwithstanding any other law, effective July 1, 2016, a local child
37 support agency may electronically file pleadings signed by an
38 agent of the local child support agency under penalty of perjury.
39 An original signed pleading shall be executed prior to, or on the
40 same day as, the day of electronic filing. Original signed pleadings
41 shall be maintained by the local child support agency for the
42 period of time proscribed by subdivision (a) of Section 68152 of

1 the Government Code. A local child support agency may maintain
2 the original signed pleading by way of an electronic copy in the
3 Statewide Automated Child Support System. The Judicial Council,
4 by July 1, 2016, shall develop rules to implement this subdivision.

5 We appreciate that the language is not mandatory in that it permits those without
6 access to e-signature to still sign manually and then only retain the document
7 until final disposition of the case. This option will allow our department to take a
8 phased implementation approach if our system changes cannot be completed by
9 the JCC effective date of January 1, 2018.

10 The department appreciates the opportunity to comment on your proposal and
11 the work done by the JCC to advance, promote, and expand legal electronic
12 communications. The department suggests only that the above Rule of Court or
13 any others that may be impacted be considered prior to implementation so that
14 all bodies of law on this issue are in line with one another.”

15 *Last year, the Legislature enacted Assembly Bill 1519, which amended Family Code*
16 *section 17400(b)(3), effective January 1, 2016, to provide that local child support*
17 *agencies (1) are required to maintain original signed pleadings only for the time period*
18 *stated in Government Code section 68152(a) (which states the relevant trial court*
19 *records retention periods beginning upon final disposition of the case); and (2) may*
20 *maintain original signed pleadings by way of an electronic copy in the Statewide*
21 *Automated Child Support System. This legislative proposal would not affect the*
22 *application of Family Code section 17400(b)(3)—which governs “[n]otwithstanding any*
23 *other law”—to e-filed pleadings signed by an agent of the local child support agency*
24 *under penalty of perjury.*

25
26 *Distinct from Family Code section 17400(b)(3), this legislative proposal would allow for*
27 *all other e-filed documents signed under penalty of perjury to be either (1) signed*
28 *electronically under standards and guidelines developed by the Judicial Council, or (2)*
29 *printed, signed by hand, and maintained in original paper form until final disposition of*
30 *the case.*

31
32 *Family Code section 17400(b)(3) would need to be amended before local child support*
33 *agencies could take advantage of any additional efficiencies resulting from the proposed*
34 *legislation, including the authority to electronically sign documents under penalty of*
35 *perjury and to retain other signatures only until final disposition of the case.*

36
37 *Lastly, staff note that implementing amendments to the California Rules of Court would*
38 *be circulated during the spring 2017 cycle so that they could go into effect on January 1,*
39 *2018. It is contemplated that the e-signature standards would be developed next year in*
40 *collaboration with the Court Executives Advisory Committee so that they too go into*
41 *effect on January 1, 2018.*

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- 17
- [Hon. Rebecca Wightman, Commissioner, Superior Court of San Francisco County](#): I listed "agree if modified" only because it was unclear from the proposal as to whether it addressed an ongoing problem that has been occurring with one of the biggest institutional filers in the area of child support proceedings in connection with CRC 2.257 (re: retention of documents filed electronically that are signed under penalty of perjury). This has been extremely problematic in the areas of signed proofs of service. Many child support agencies have "paperless" files, and there is a statewide practice of imaging originals for their records, but not keeping originals. There are also many thousands of documents that are signed by process servers (service of governmental complaints, OSCs re contempt) vs. state or county employees (Motions, Orders after Hearing), the latter being such that electronic signatures are likely not difficult to create. Several years ago, CRC 2.257 was an impediment to getting many local child support agencies to e-file more documents (through courts' e-filing systems), and we were told at that time that the corresponding CCP sections were being looked at and it was suggested that everything get addressed at once.

18 I'm now wondering if anyone at the Judicial Council consulted with the AB1058
19 Program Manager on this topic.

20 I apologize for not being particularly tech savvy, but it has been my experience
21 that when certain general civil statutes are amended, in particular ones that also
22 apply to Family Law, the area and operations of child support cases, are
23 sometimes overlooked. Sometimes there is a need to carve out an exception for
24 DCSS that works for their system, and other times there should not be an
25 exception and they need to adjust. However, has the question/issue even been
26 discussed during the process of preparing this proposal?

27 I would ask that Fam/Juv consult with Judicial Council's AB1058 Program
28 Manager and the State Dept. of Child Support Services (DCSS) to make sure
29 that the proposal here goes far enough to accommodate their statewide system."

30 *Before circulating this legislative proposal for public comment, it was reviewed by the*
31 *Judicial Council's Family and Juvenile Law Advisory Committee. No concerns were*
32 *raised by the committee at that time about the electronic signature provisions. In*
33 *addition, the DCSS expressed its support of the proposed amendment so long as it did*
34 *not conflict with Family Code section 17400(b)(3); it does not for the reasons stated*
35 *above. The DCSS also expressed its appreciation that the proposal retained the option*
36 *of maintaining the original signature because this option would allow DCSS to take a*
37 *phased-in approach to implementing changes in its system.*

- 38
- 39
- 40
- [State Bar Committee on Administration of Justice](#): "CAJ agrees with the proposed amendments to section 1010.6, requiring that the person filing electronically signed documents maintain custody of the original signed

1 documents only until final disposition of the case, rather than indefinitely as it is
2 presently required. CAJ supports the use of electronic signatures under the
3 requirements that the electronic signature satisfy the procedures, standards and
4 guidelines of the Judicial Council, to be consistent with the language in
5 Government Code Section 68150(g)."

- 6 • Superior Court of Orange County's Family Law and Juvenile Court Managers:
7 "Would government agencies be exempt from maintaining original documents
8 until "final disposition of the case" or is maintaining the electronic copy of
9 documents sufficient?"

10 *Similar to other e-filers (with the exception of local child support agencies as provided in*
11 *Family Code section 17400(b)(3)), government agencies would have two options when*
12 *e-filing documents signed under penalty of perjury: (1) electronically signing the*
13 *document under the standards and guidelines developed by the Judicial Council, or (2)*
14 *printing out the document, physically signing it, and maintaining the original until final*
15 *disposition of the case. Government agencies would not be required to maintain the*
16 *original documents if they electronically sign the e-filed documents under option (1).*
17 *These proposed amendments are intended to facilitate e-filing, while still ensuring that*
18 *signatures made under penalty of perjury may be verified and validated if their*
19 *authenticity comes into question during the pendency of the proceeding.*

- 20 • Superior Court of San Bernardino County: "The proposed changes are a good
21 start, but do not go far enough in addressing the obstacles faced by litigants who
22 are indigent or otherwise entitled to file and obtain copies of forms at no cost,
23 such as petitioners for domestic violence restraining orders. Until and unless the
24 requirement to print and provide a "wet" signature is eliminated entirely, these
25 filers will see minimal (if any) benefit from the proposed changes. The current
26 legislation shifts the cost burden to these litigants (paper, toner, etc.) and
27 presents an obstacle to access that many are unable to overcome. Until this
28 obstacle is removed, the legislation does nothing to promote equal access, and I
29 would be unable to support it."

30 *Staff expect that this measure will ultimately benefit indigent litigants, who would not be*
31 *required to print and retain the wet signature if they elect to electronically sign forms.*
32 *This means that if they fill out the forms online, they would be able to e-sign and e-file*
33 *the document without ever printing it out. In developing the standards and guidelines for*
34 *e-signatures in collaboration with the Court Executives Advisory Committee, the*
35 *subcommittee should keep the needs of indigent and self-represented litigants in mind*
36 *and ensure that the e-signature requirements are flexible enough to be accessible to all*
37 *litigants. Judicial Council forms should also be revised to implement the legislation and*
38 *allow for the application of e-signatures to forms.*

39

40 (3) Any document ~~that is electronically filed with the~~ received electronically by the court
41 ~~after the close of business on any day shall be~~ before midnight on a court day shall be

1 deemed to have been filed on that court day, and any document that is received
2 electronically after midnight is deemed to have been filed on the next court day. “Close
3 of business,” as used in this paragraph, shall mean 5 p.m. or the time at which the court
4 would not accept filing at the court’s filing counter, whichever is earlier.

5
6 (4)–(6) * * *

7
8 (c) * * *

9
10 (d) A superior court may, by local rule, require electronic filing and service in civil cases,
11 subject to the requirements and conditions stated in subdivision (b) of this section, the
12 rules adopted by the Judicial Council under subdivision (f), and the following conditions:

13
14 ~~(1) Notwithstanding subdivision (b), the Orange County Superior Court may, by local~~
15 ~~rule and until July 1, 2014, establish a pilot project to require parties to specified civil~~
16 ~~actions to electronically file and serve documents, subject to the requirements set forth in~~
17 ~~paragraphs (1), (2), (4), (5), and (6) of subdivision (b) and rules adopted pursuant to~~
18 ~~subdivision (e) and the following conditions:~~

19
20 ~~(A)~~ The court shall have the ability to maintain the official court record in electronic
21 format for all cases where electronic filing is required.

22
23 ~~(B)~~(2) The court and the parties shall have access either to more than one electronic filing
24 service provider capable of electronically filing documents with the court, or to electronic
25 filing access directly through the court. Any fees charged by the court shall be for no
26 more than the actual cost of the electronic filing and service of the documents, and shall
27 be waived when deemed appropriate by the court, including, but not limited to, for any
28 party who has received a fee waiver. Any fees charged by an electronic filing service
29 provider shall be reasonable and shall be waived when deemed appropriate by the court,
30 including, but not limited to, for any party who has received a fee waiver.

31
32 ***DRAFTER’S NOTE:*** *The following comment was received regarding the proposed*
33 *amendment to Code of Civil Procedure section 1010.6(d)(2):*

- 34
35 • Superior Court of Orange County, Civil and Probate Managers: “One of the
36 requirements is that if the court wants to use eFiling Service Providers, they must
37 provide more than one. While I think the purpose of this is prevent the
38 monopolization of eFiling services by one private company, this rule does not
39 effectively eliminate that. EFSPs frequently specialize. For example, one
40 company may only file Family cases and another Civil. If those were the only 2
41 EFSPs, they still have effective monopolies.”
42

1 *Taking any action on this comment would appear to be outside the scope of this*
2 *legislative proposal, but might be something for the subcommittee to take under*
3 *consideration when it reviews legislative and rules proposals to implement the E-Filing*
4 *Workstream’s recommendations next year. Meanwhile, the court may take this into*
5 *consideration when certifying electronic filing service providers (“EFSP”) and deciding*
6 *whether to require e-filing. Postponing mandatory e-filing is always an option if there are*
7 *not enough EFPSs for each case type to provide for a competitive e-filing environment.*
8

9 ~~(C)~~(3) The court shall have a procedure for the filing of nonelectronic documents in order
10 to prevent the program from causing undue hardship or significant prejudice to any party
11 in an action, including, but not limited to, unrepresented parties.
12

13 (4) Unrepresented persons are exempt from mandatory electronic filing and service.
14

15 ~~(D) A court that elects to require electronic filing pursuant to this subdivision may permit~~
16 ~~documents to be filed electronically until 12 a.m. of the day after the court date that the~~
17 ~~filing is due, and the filing shall be considered timely. However, if same day service of a~~
18 ~~document is required, the document shall be electronically filed by 5 p.m. on the court~~
19 ~~date that the filing is due. Ex parte documents shall be electronically filed on the same~~
20 ~~date and within the same time period as would be required for the filing of a hard copy of~~
21 ~~the ex parte documents at the clerk’s window in the participating county. Documents~~
22 ~~filed on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest~~
23 ~~court day following the filing.~~
24

25 ~~(2) If a pilot project is established pursuant to paragraph (1), the Judicial Council shall~~
26 ~~conduct an evaluation of the pilot project and report to the Legislature, on or before~~
27 ~~December 31, 2013, on the results of the evaluation. The evaluation shall review, among~~
28 ~~other things, the cost of the program to participants, cost effectiveness for the court,~~
29 ~~effect on unrepresented parties and parties with fee waivers, and ease of use for~~
30 ~~participants.~~
31

32 (e) * * *
33

34 (f) The Judicial Council shall, ~~on or before July 1, 2014,~~ adopt uniform rules to permit
35 the mandatory electronic filing and service of documents for specified civil actions in the
36 trial courts of the state, ~~which shall be informed by any study performed pursuant to~~
37 ~~paragraph (2) of subdivision (d) and~~ which shall include statewide policies on vendor
38 contracts, privacy, access to public records, unrepresented parties, parties with fee
39 waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the
40 integrity of electronic service. These rules shall conform to the conditions set forth in this
41 section, as amended from time to time.
42

1 ~~(g) (1) Upon the adoption of uniform rules by the Judicial Council for mandatory~~
2 ~~electronic filing and service of documents for specified civil actions in the trial courts of~~
3 ~~the state, as specified in subdivision (f), a superior court may, by local rule, require~~
4 ~~mandatory electronic filing, pursuant to paragraph (2) of this subdivision.~~

5
6 ~~(2) Any superior court that elects to adopt mandatory electronic filing shall do so~~
7 ~~pursuant to the requirements and conditions set forth in this section, including, but not~~
8 ~~limited to, paragraphs (1), (2), (4), (5), and (6) of subdivision (b) of this section, and~~
9 ~~subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (d), and pursuant to the~~
10 ~~rules adopted by the Judicial Council, as specified in subdivision (f).~~

11
12 **§ 1011.**

13
14 The service may be personal, by delivery to the party or attorney on whom the service is
15 required to be made, or it may be as follows:

16
17 (a)-(b) * * *

18
19 (c) Electronic service shall be permitted pursuant to Section 1010.6 and the rules on
20 electronic service in the California Rules of Court.

21
22 **§ 1013b.**

23
24 (a) Proof of electronic service may be made by any of the methods provided in Section
25 1013a, with the following exceptions:

26
27 (1) The proof of electronic service does not need to state that the person making the
28 service is not a party to the cause.

29
30 (2) The proof of electronic service shall state:

31
32 (A) The electronic service address of the person making the service, in addition to that
33 person's residence or business address;

34
35 (B) The date of the electronic service, instead of the date and place of deposit in the mail;

36
37 (C) The name and electronic service address of the person served, in place of that
38 person's name and address as shown on the envelope; and

39
40 (D) That the document was served electronically in place of the statement that the
41 envelope was sealed and deposited in the mail with postage fully prepaid.

1 (b) Proof of electronic service may be in electronic form and may be filed electronically
2 with the court.

3
4 (c) Proof of electronic service shall be signed as provided in subparagraph (B) of
5 paragraph (2) of subdivision (b) of Section 1010.6.

6
7 *Drafter's Note: The following comments were received in response to the proposed*
8 *new section 1013b.*

- 9
- 10 • State Bar Committee on Administration of Justice: “CAJ agrees that the new
11 section 1013b is sufficient to address proof of service requirements as to
12 electronic service.”
 - 13 • Superior Court of Los Angeles County: “Removing the time of electronic service
14 from the proof of electronic service could cause difficulties if the proof of service
15 is challenged by way of motion as there would be no way for the judicial officer to
16 determine the time and date of service other than by declaration or sworn
17 testimony. This could cost the court money in terms of judicial time spent on this
18 issue.”

19 *The subcommittee previously recommended omitting the time because the person filling*
20 *out the proof of e-service would not know the exact time of e-service until filing. Staff*
21 *learned from One Legal, an EFSP, that the time is often omitted on proofs of e-service*
22 *because of a fear of committing perjury. If the subcommittee recommends a midnight*
23 *cut-off time, the exact time of e-service would not be needed to determine the effective*
24 *date of e-service. The proof of service would need state only the day of e-service.*

25 *However, there may be instances when the time of e-service is still relevant. In response*
26 *to similar proposed amendments to rule 2.251(i) of the California Rules of Court (which*
27 *will be reviewed in the joint subcommittee meeting next week), the Superior Court of*
28 *Orange County's Judicial Assistance Group stated:*

29 [T]here are instances where the time of service is critical. For example,
30 CRC, Rule 3.1203 states that “a party seeking an ex parte order must
31 notify all parties no later than 10:00 a.m. the court day before the ex parte
32 appearance” Not including the time on the proof in these cases may
33 result in the parties and the court preparing for a hearing that cannot take
34 place when the party being served objects that they were not notified by
35 10 AM. Not having the time also precludes the clerk from notifying the
36 judge whether or not there was valid notice given. There may not be a lot
37 of these cases, and even fewer where the objection is raised, so the
38 deletion may pose no problem most of the time. Alternatively, consider
39 not deleting the language “and time”, and adding “, if relevant to validity of
40 service” or something like that.

41

1 *The subcommittee should discuss whether to recommend that time be required on the*
2 *proof of e-service, required only in certain instances, or never required on the proof of e-*
3 *service.*

- 4 • Mark W. Lomax, Attorney: “(1) Since C.C.P. section 1010.6(a)(1)(A) authorizes
5 two methods of electronic service--electronic transmission and electronic
6 notification--proposed new C.C.P. section 1013b, which will prescribe proof of
7 electronic service, should require that a proof of electronic service state which
8 method of service was used.

9 (2) Proposed new C.C.P. section 1013b does not seem to contemplate service
10 by electronic notification. It does not require a proof of electronic service effected
11 by electronic notification to contain information that would be important if service
12 were disputed, such as the name of the electronic service provider. Here is the
13 relevant portion of a proof of electronic service made by electronic notification,
14 which was filed in 2016 in a complex litigation case in the Los Angeles Superior
15 Court: "Service was effectuated via electronic service by Case Anywhere, the
16 matter's e-service provider pursuant to court order dated March 14, 2011. I
17 uploaded onto the Case Anywhere document depository a true and correct copy
18 of the document being served, and the Case Anywhere electronic service system
19 e-mailed notices of uploading of the same, which notices included links to the
20 documents uploaded, to the parties indicated in the attached electronic service
21 list." As you can see, very little of the contents of this proof of service would be
22 required by proposed new section 1013b.

23 *Because EFSPs are effectively stepping into the shoes of the postal service for*
24 *purposes of e-service, staff view including information about them in the proof of e-*
25 *service as unnecessary.*

26 *Staff also view proposed section 1013b as being inclusive of e-service by both*
27 *notification and transmission. Proposed subdivision (a)(D) requires that the proof of e-*
28 *service state “[t]hat the document was served electronically in place of the statement*
29 *[required by 1013a] that the envelope was sealed and deposited in the mail with postage*
30 *fully prepaid.” This would appear to encompass e-service not only by transmission, but*
31 *also notification, because electronic notification is defined in Code of Civil Procedure*
32 *section 1010.6(a)(1)(C) as “the notification of the party or other person that a document*
33 *is served by sending an electronic message to the electronic address at or through*
34 *which the party or other person has authorized electronic service, specifying the exact*
35 *name of the document served, and providing a hyperlink at which the served document*
36 *may be viewed and downloaded.”*

37 (3) Under current law, proof of service by mail is prescribed by C.C.P. section
38 1013a. Instead of amending section 1013a to include a provision prescribing
39 proof of electronic service, the Judicial Council proposal recommends enacting a
40 new C.C.P. section, 1013b, that will prescribe proof of electronic service. This

1 could cause confusion in some cases since section 1013a is cross-referenced in
2 a number of statutes. (See, e.g., C.C.P. §§[405.23](#), [594\(b\)](#), and [684.220\(c\)](#); Civ.
3 Code §1719(g); Gov. Code §915.2(c); Labor Code §3082; and Prob. Code
4 §1261.) The fact that section 1013a is cross-referenced in those statutes, and
5 that new section 1013b will not be, may lead some attorneys and courts to
6 conclude that service under those statutes cannot be made electronically.

7 *The subcommittee should discuss whether to keep the proof of e-service provisions in a*
8 *separate proposed section 1013b or add it to section 1013a. Combining the two*
9 *provisions for proof of service into section 1013a would be rather unwieldy, albeit*
10 *doable. In addition, many of the Code of Civil Procedure sections identified by Mr.*
11 *Lomax reference service by mail and will need to be cleaned up during the next round of*
12 *modernization proposals in 2017. In light of these considerations, staff propose retaining*
13 *a separate section 1013b to address proof of e-service and incorporating references to*
14 *section 1013b into relevant provisions in a clean-up legislative proposal next year.*

15 (4) There are special provisions for service of papers under title 9 (§§680.010-
16 724.260) of the Code of Civil Procedure, the Enforcement of Judgments Law. To
17 avoid confusion about the application of section 1010.6 to service of papers
18 under title 9, the council should consider appropriate proposed amendments to
19 chapter 4 (§§684.010-684.310) of division 1 of title 9, regarding service of
20 papers. It should be noted that the council has specific rulemaking authority
21 under title 9 (C.C.P. §681.030) and that the California Law Revision Commission
22 has continuing authorization to review and make recommendations concerning
23 enforcement of judgments (C.C.P. §681.035).

24 *This recommendation is outside the scope of this legislative proposal. The subcommittee*
25 *should take it under consideration during the next round of modernization proposals in*
26 *2017.*

LEG16-10**Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|--|---------------------------|
| 1. | Bet Tzedek Legal Services by Janet R. Morris, Esquire Attorney | A | <p>Bet Tzedek supports the proposal to eliminate the wet signature requirement for electronically assembled and filed documents and to establish procedures for an electronic signature.</p> <p>In our our experience in managing a large self help conservatorship clinic; consistency and accuracy is achieved when there is a single electronically signed and filed document.</p> <p>We would also like to suggest that there be a way to receive the court's orders by email as well so that a litigant could download and print them. This will assist litigants who cannot make it back to the courthouse easily to retrieve their orders post hearing.</p> | |
| 2. | California Department of Child Support Services by Alisha A. Griffin Director Rancho Cordova | NI | <p>DCSS has reviewed LEG16-10 entitled Technology: Electronic Filing, Service, and Signature, and is supportive of the changes JCC has proposed. The JCC proposals address much of what this department tried to address with AB 1519, namely the requirement to keep an original wet signature on a document signed under penalty of perjury indefinitely (CCP 1010.6). The fact that your proposal seeks to amend that section to permit these documents be signed by means of electronic signature is a huge step forward so long as it does not run afoul of Family Code Section 17400(b)(3) or the resulting Judicial Council Rules of Court, which states:</p> | |

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| | | <p>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.</p> <p>We appreciate that the language is not mandatory in that it permits those without access to e-signature to still sign manually and then only retain the document until final deposition of the case. This option will allow our department to take a phased implementation approach if our system changes cannot be completed by the JCC effective date of January 1, 2018.</p> <p>The department appreciates the opportunity to comment on your proposal and the work done by the JCC to advance, promote, and expand legal electronic communications. The</p> | |

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|----|--|-----------------|---|---------------------------|
| | | | department suggests only that the above Rule of Court or any others that may be impacted be considered prior to implementation so that all bodies of law on this issue are in line with one another. | |
| 3. | Laurel Halbany MRHFM LLC Oakland | AM | <p>The proposed changes to electronic service rules should retain a filing and service deadline of "close of business" (that is, 5:00 p.m.) for a document to be considered timely filed and served that court day.</p> <p>Changing the deadline to "before midnight" invites gamesmanship and will, in effect, eliminate a full day from the required time of service. Vendors such as LexisNexis allow automated service, such that a document may be uploaded with the direction that it is automatically served at a particular time - for example, that a document uploaded at 4:45 p.m. not actually be served and available to opposing parties until just before midnight. While it is not uncommon for attorneys to work somewhat later than 5:00 p.m., it is far less common to be working at midnight. Thus, parties have every incentive to delay service until close to midnight, depriving their opponents of additional time to review and respond to document served.</p> <p>Additionally, the proposal is silent as to the timeliness of documents served precisely at</p> | |

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|----|---------------------------------------|-----------------|--|---------------------------|
| | | | midnight. | |
| 4. | Lisa Los Angeles | AM | I feel that the filing deadline should be restricted to 5:00 p.m. Support staff should not have to bear the burden of working until midnight to pick up the slack for attorneys that wait until the last minute to draft and/or make revisions. | |
| 5. | Mark W. Lomax Attorney Pasadena | AM | <p>(1) Since C.C.P. section 1010.6(a)(1)(A) authorizes two methods of electronic service-- electronic transmission and electronic notification--proposed new C.C.P. section 1013b, which will prescribe proof of electronic service, should require that a proof of electronic service state which method of service was used.</p> <p>(2) Proposed new C.C.P. section 1013b does not seem to contemplate service by electronic notification. It does not require a proof of electronic service effected by electronic notification to contain information that would be important if service were disputed, such as the name of the electronic service provider. Here is the relevant portion of a proof of electronic service made by electronic notification, which was filed in 2016 in a complex litigation case in the Los Angeles Superior Court: "Service was effectuated via electronic service by Case Anywhere, the matter's e-service provider pursuant to court order dated March 14, 2011. I uploaded onto the Case Anywhere document depository a true</p> | |

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|-------------|----------|--|--------------------|
| | | <p>and correct copy of the document being served, and the Case Anywhere electronic service system e-mailed notices of uploading of the same, which notices included links to the documents uploaded, to the parties indicated in the attached electronic service list." As you can see, very little of the contents of this proof of service would be required by proposed new section 1013b.</p> <p>(3) Under current law, proof of service by mail is prescribed by C.C.P. section 1013a. Instead of amending section 1013a to include a provision prescribing proof of electronic service, the Judicial Council proposal recommends enacting a new C.C.P. section, 1013b, that will prescribe proof of electronic service. This could cause confusion in some cases since section 1013a is cross-referenced in a number of statutes. (See, e.g., C.C.P. §§405.23, 594(b), and 684.220(c); Civ. Code §1719(g); Gov. Code §915.2(c); Labor Code §3082; and Prob. Code §1261.) The fact that section 1013a is cross-referenced in those statutes, and that new section 1013b will not be, may lead some attorneys and courts to conclude that service under those statutes cannot be made electronically.</p> <p>(4) There are special provisions for service of papers under title 9 (§§680.010-724.260) of the Code of Civil Procedure, the Enforcement of</p> | |

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|----|--|-----------------|--|---------------------------|
| | | | <p>Judgments Law. To avoid confusion about the application of section 1010.6 to service of papers under title 9, the council should consider appropriate proposed amendments to chapter 4 (§§684.010-684.310) of division 1 of title 9, regarding service of papers. It should be noted that the council has specific rulemaking authority under title 9 (C.C.P. §681.030) and that the California Law Revision Commission has continuing authorization to review and make recommendations concerning enforcement of judgments (C.C.P. §681.035).</p> <p>(5) I strongly support amending C.C.P. section 664.5 to substitute "serve" for "mail" because of a conflict between section 664.5 and the California Rules of Court. Under C.R.C. rules 8.104(a)(2) (unlimited cases) and 8.822(a)(2) (limited cases), any manner of service of notice of entry of judgment permitted by the Code of Civil Procedure, including electronic service when permitted under C.C.P. section 1010.6 and C.R.C. rules 2.250-2.261, is sufficient to trigger the running of the time to file a notice of appeal. Rules 8.104(a)(2) and 8.822(a)(2) conflict with C.C.P. section 664.5, which requires a party or the clerk to "mail" (not "serve") notice of entry of judgment.</p> | |
| 6. | Orange County Bar Association by Todd G. Friedland President | AM | CCP Section 1010.6(a) authorizes service by electronic means. Specifically, 1010.6(a)(2) addresses acceptance of electronic service, and 1010.6(a)(3) allows the court to serve its | |

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|-------------|----------|--|--------------------|
| | | <p>documents electronically. The proposed amendments to both of these provisions would include “other person[s].” The definitions at 1010.6(a)(1)(A) as proposed, and currently (B) and (C) mention “other person,” but provide no guidance. For purposes of clarification, it is suggested that the language of the section or of the Advisory Committee Comments, indicate who is contemplated as an “other person.” It is believed this clarification is of increased importance, given subsequent provisions of the section dealing with court-ordered electronic service.</p> <p>Further, subdivisions (a)(1)(B) and (C) indicate that “a party or other person” has authorized electronic service. This appears consistent with the proposed language for inclusion in 1010.6(a)(2) and (3) where either a party or other person has agreed to electronic service, but not where the court has ordered such service. It is suggested thought be given as to whether the use of “authorized” is accurate or desirable in subdivisions (a)(1)(B) and (C).</p> <p>Additionally, the discussion of these particular amendments notes, at page 5 of the proposal, that the mandatory electronic service imposed by 1010.6(a)(2) and (3) would apply, “to parties and other persons only if they are represented.” This is not clear from the proposed language. To avoid confusion, it is suggested that the word</p> | |

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| | | <p>“represented” be inserted before “other person” in the respective provisions providing for court-ordered electronic service.</p> <p>Section 1010.6(a)(5) and (b)(3) apply to the effective dates of service and filing, respectively. As written, the proposed language is silent as to service or filing made at midnight. Further, in both instances, the proposed language uses the concept of a court day. In connection with service, this poses a problem as service, traditionally, may be made on any day. As to filing, this could pose a problem were the language interpreted as allowing filing only on a court day, that is, one might dispute not the effective date of filing, but the very effectiveness of filing.</p> <p>For these reasons, it is suggested that a version of the language of the Orange County Superior Court pilot program as to date of filing, be adopted as to both service and filing. Assuming the concept of “court day” is retained in connection with service, the following is provided for consideration: Electronically [served – in the case of 1010.6(a)(5)] [filed – in the case of 1010.6(b)(3)] documents [served] [filed] prior to midnight on a court day will be deemed [served] [filed] as of that day. Filing occurs at the time the document is received by the court and a confirmation of receipt is created. Any document electronically [served]</p> | |

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| | | <p>[filed] at or after midnight, or filed on a noncourt day, will be deemed [served] [filed] on the next court day.</p> <p>Request for Specific Comments 1 - For the reasons set forth above, the proposal does not address the stated purpose. Further, there is concern with the inconsistencies posed by the provisions proposed for codification and CRC Rule 2.251.</p> <p>Specifically, the proposed language at 1010.6(a)(2) and (3) leads a party to expect either an agreement or a court order before they would be subject to mandatory electronic service. This, however, is not the case per Rule 2.251(b)(1)(B) which provides that the act of electronically filing any document with the court is evidence that the party has agreed to accept such service. This has proven to be an unhappy trap for litigants and their counsel in litigation brought in the Orange County courts where electronic filing is mandatory. These proposals are made to facilitate and encourage greater use of electronic filing. Accordingly, without some acknowledgment of these inconsistencies and attendant changes to the provisions of the code section or the Rule, this will continue to be a potential trap, growing in parallel with electronic filings.</p> <p>It is urged that, after the proposed amendments</p> | |

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| | | | <p>are finalized, the forgoing provisions of Rule 2.251, together with other of its provisions such as (h)(4) utilizing “close of business,” be reviewed to avoid conflicts with relevant statutes and ensure consistency in this area.</p> <p>2- CCP Section 1010.6(a)(5) and (b)(3) should provide that documents electronically served and filed up until midnight be deemed served or filed on that day. Please see comments above in the general discussion as to proposed language, time, and “court day.”</p> | |
| 7. | State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco | A | <p>As discussed below, CAJ agrees with the proposed amendments.</p> <p>CAJ agrees with the proposed amendments to section 1010.6, requiring that the person filing electronically signed documents maintain custody of the original signed documents only until final disposition of the case, rather than indefinitely as it is presently required. CAJ supports the use of electronic signatures under the requirements that the electronic signature satisfy the procedures, standards and guidelines of the Judicial Council, to be consistent with the language in Government Code Section 68150(g).</p> <p>CAJ agrees that the amendments to section 1010.6 are necessary to provide a consistent, effective date of filing, so that any</p> | |

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| | | <p>document received electronically by the court before midnight on a court day shall be deemed to have been filed on that court day, and any document received after midnight is deemed to have been filed on the next court day. CAJ believes this is more clear than the current requirement that documents be received “by the close of business” which may be 5:00 p.m., or earlier, and is often changing due to budget considerations of the courts who are limiting filing counter times.</p> <p>CAJ agrees that the proposed amendments to sections 664.5 and 1011 to reference “service” instead of “mail” are a necessary update to the language, and agrees that the recognition of electronic service as a permissible method of service in section 1011 should be added as proposed.</p> <p>CAJ agrees that the new section 1013b is sufficient to address proof of service requirements as to electronic service.</p> <p>Our specific comments as solicited are as follows:</p> <p><i>Does the Proposal appropriately address the stated purpose?</i></p> <p>CAJ agrees that the proposals as stated do address the purpose, which is in major part to</p> | |

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| | | <p>update the Code of Civil Procedure to properly address electronic filing and electronic service issues.</p> <p><i>Should the Code of Civil Procedure Section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?</i></p> <p>CAJ agrees that documents electronically filed and served up until midnight should be deemed filed or served on that day. CAJ discussed an alternative 5:00 p.m. cut-off time for electronic filing and electronic service. In discussing this, members of CAJ agreed that a midnight deadline promotes more conformity and consistency. Members referenced the Los Angeles County and Orange County e-filing systems, as well as the federal filing systems, which allow for a midnight deadline for e-filing citing their efficiency. Additionally, members cited the convenience factor of being able to file documents after standard business hours, especially for self-represented litigants who may need to be at work during ordinary court hours, and solo/small firm practitioners. Finally, members of CAJ placed significance on the fact that any risk of purported “abuse” of midnight filing deadlines is mitigated by the extended two court days allotted for electronic service</p> | |

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| | | | presently under Code of Civil Procedure Section 1010.6(a)(4), which remains unchanged in the proposal. | |
| 8. | State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles | A | <ul style="list-style-type: none">• <u>Does the proposal appropriately address the stated purpose?</u> Yes. <ul style="list-style-type: none">• <u>Should Code of Civil Procedure section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?</u> SCDLS believes midnight should be the cutoff time. Additional Comments SCDLS supports the proposal because it protects self-represented litigants by not requiring that they file electronically, and it protects indigent individuals represented by counsel because there the electronic filing fee will not be incurred by parties with an approved fee waiver. | |
| 9. | Superior Court of Los Angeles County | AM | <ul style="list-style-type: none">• With regard to the time deadline for electronic filing, we suggest that the views of the attorneys and advocates for self- | |

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| | | | <p>represented litigants would be most important.</p> <ul style="list-style-type: none"> • This proposal would provide cost savings due to a likely reduction in staff hours currently spent serving large numbers of the public at filing windows and processing paper documents and files. • Making this law effective one year after approval would be sufficient for implementation in LASC. • We believe it would work well in larger courts (100 judicial officers or more). We have no comment regarding smaller courts. • Removing the time of electronic service from the proof of electronic service could cause difficulties if the proof of service is challenged by way of motion as there would be no way for the judicial officer to determine the time and date of service other than by declaration or sworn testimony. This could cost the court money in terms of judicial time spent on this issue. | |
| 10. | Superior Court of Orange County Civil and Probate Managers by Bryan Chae Principal Analyst | NI | One of the requirements is that if the court wants to use eFiling Service Providers, they must provide more than one. While I think the purpose of this is prevent the monopolization of eFiling services by one private company, this | |

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| | | | rule does not effectively eliminate that. EFSPs frequently specialize. For example, one company may only file Family cases and another Civil. If those were the only 2 EFSPs, they still have effective monopolies. | |
| 11. | Superior Court of Orange County Family Law and Juvenile Court Managers by Michelle Wang Program Coordinator Specialist | NI | Would government agencies be exempt from maintaining original documents until “final disposition of the case” or is maintaining the electronic copy of documents sufficient? | |
| 12. | Superior Court of San Bernardino County by Kelly McNamara Managing Attorney | AM | The proposed changes are a good start, but do not go far enough in addressing the obstacles faced by litigants who are indigent or otherwise entitled to file and obtain copies of forms at no cost, such as petitioners for domestic violence restraining orders. Until and unless the requirement to print and provide a "wet" signature is eliminated entirely, these filers will see minimal (if any) benefit from the proposed changes. The current legislation shifts the cost burden to these litigants (paper, toner, etc.) and presents an obstacle to access that many are unable to overcome. Until this obstacle is removed, the legislation does nothing to promote equal access, and I would be unable to support it. | |
| 13. | Superior Court of San Diego County by Mike Roddy Executive Officer | A | No specific comment. | |

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| 14. | Hon. Rebecca Wightman Commissioner Superior Court of San Francisco County | AM | <p>I am absolutely in favor of legislation that will accomplish the items identified in the Executive Summary of the proposal.</p> <p>I listed "agree if modified" only because it was unclear from the proposal as to whether it addressed an ongoing problem that has been occurring with one of the biggest institutional filers in the area of child support proceedings in connection with CRC 2.257 (re: retention of documents filed electronically that are signed under penalty of perjury). This has been extremely problematic in the areas of signed proofs of service. Many child support agencies have "paperless" files, and there is a statewide practice of imaging originals for their records, but not keeping originals. There are also many thousands of documents that are signed by process servers (service of governmental complaints, OSCs re contempt) vs. state or county employees (Motions, Orders after Hearing), the latter being such that electronic signatures are likely not difficult to create). Several years ago, CRC 2.257 was an impediment to getting many local child support agencies to e-file more documents (through courts' e-filing systems), and we were told at that time that the corresponding CCP sections were being looked at and it was suggested that everything get addressed at once.</p> <p>I'm now wondering if anyone at the Judicial</p> | |

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|-------------|----------|---|--------------------|
| | | <p>Council consulted with the AB1058 Program Manager on this topic.</p> <p>I apologize for not being particularly tech savvy, but it has been my experience that when certain general civil statutes are amended, in particular ones that also apply to Family Law, the area and operations of child support cases, are sometimes overlooked. Sometimes there is a need to carve out an exception for DCSS that works for their system, and other times there should not be an exception and they need to adjust. However, has the question/issue even been discussed during the process of preparing this proposal?</p> <p>I would ask that Fam/Juv consult with Judicial Council's AB1058 Program Manager and the State Dept. of Child Support Services (DCSS) to make sure that the proposal here goes far enough to accommodate their statewide system.</p> | |



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

| | |
|--|---|
| Date July 5, 2016 | Action Requested Please review by July 8 meeting |
| To Rules and Policy Subcommittee | Deadline July 8, 2016 |
| From Tara Lundstrom, Attorney Criminal Justice Services | Contact Tara Lundstrom 415-865-7995 phone tara.lundstrom@jud.ca.gov |
| Subject Legislative Proposal on E-Filing and E-Service in Criminal Cases | |

Background

Recognizing that courts are swiftly proceeding to a paperless world, the Information Technology Advisory Committee (ITAC) is leading a multi-year, collaborative project to modernize the statutes and rules to facilitate e-service and e-filing and to foster modern e-business practices. This legislative proposal is part of this modernization effort and was recommended for circulation during the spring cycle by ITAC and the Criminal Law Advisory Committee (CLAC).¹

This legislative proposal would clarify that permissive e-filing and e-service under Code of Civil Procedure section 1010.6 are authorized in criminal proceedings. The proposed new Penal Code section 690.5 would incorporate by reference subdivisions (a) and (b) of the Code of Civil Procedure.

¹ The Judicial Council's Government Affairs office explored introducing this proposal during the current legislative cycle, but was unsuccessful in this effort.

Three comments were received in response to the Invitation to Comment; all were favorable. CLAC has not yet had the opportunity to review the comments because its meeting last week was cancelled. If CLAC reconvenes before Friday, staff will report orally during the subcommittee meeting on its recommendation. Otherwise staff will report on the subcommittee's recommendation during the rescheduled CLAC meeting. The proposal will then be reviewed by ITAC during its August 1 meeting for recommendation to the Policy Coordination and Liaison Committee in October.

Subcommittee's Task

The subcommittee is tasked with reviewing the comments and:

- Advising ITAC to recommend that the Judicial Council sponsor all or part of the proposal;
- Rejecting the proposal; or
- Asking staff or group members for further information and analysis.

Attachments

1. Proposed new Penal Code section 690.5
2. Comment chart

Section 690.5 of the Penal Code would be added, effective January 1, 2018, to read:

1 **§ 690.5. Applicability of Code of Civil Procedure section 1010.6; exceptions**

2

3 (a) Subdivisions (a) and (b) of Code of Civil Procedure section 1010.6 are applicable to
4 criminal actions, except as otherwise provided in this code.

5

6 (b) The Judicial Council shall adopt uniform rules for the electronic filing and service of
7 documents in criminal cases in the trial courts of this state.

DRAFT

LEG16-03

Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions

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

| | Commentator | Position | Comment | Committee Response |
|----|--|----------|--|--------------------|
| 1. | Orange County Bar Association By Todd Friedland President | A | | |
| 2. | State Bar of California, Standing Committee on the Delivery of Legal Services By Phong S. Wong Chair | A | <p><u>Does the proposal appropriately address the stated purpose?</u></p> <p>Yes. In an effort to reduce the inefficiencies and economic burdens in our court systems associated with paper filings and hard-copy service of process, the Information Technology Advisory Committee for the Judicial Council is leading a modernization project to facilitate electronic filings and service. Up until now, although the Code of Civil Procedure authorizes electronic filing and service in civil proceedings, there is no corresponding authority in the Penal Code that would authorize such filings in criminal cases.</p> <p>This proposed legislative amendment would authorize such electronic filings in criminal cases, but would not make such electronic process mandatory. Such process would only be permissive and applicable where the courts in a particular jurisdiction have the resources to implement electronic filing and service in criminal matters, and only where the parties consent to electronic filing and service. Given the language in the amendment that requires the affected parties to consent to electronic filing and service, this amendment would have no impact on persons of low income or other vulnerable populations who may not have access to electronic methods of service: those</p> | |

LEG16-03**Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions**

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

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|---|---------------------------|
| | | | persons simply would not consent to electronic service of process and would continue to receive hard-copy notices and hard-copy service of process. | |
| 3. | Superior Court of California, County of San Diego By Mike Roddy Executive Officer | A | | |