



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

MEMORANDUM

Date	Action Requested
November 8th, 2016	Please read before November 17th subcommittee conference call
To	Deadline
Members of the Joint Appellate Technology Subcommittee	November 17th, 2015
From	Contact
Katherine Sher, Attorney, Legal Services	Katherine Sher 415-865-8031 katherine.sher@jud.ca.gov
Subject	
Possible JATS projects for 2017	

Introduction

At its November 17th conference call, JATS will be deciding on what work to take on in the coming year. The possible projects include further changes to the appellate Rules of Court, continuing the work of ensuring that the rules are consistent with modern e-filing practices and that statewide standards for e-filing are put in place where appropriate. In addition, JATS may be called upon to work on the creation of new technology related policies for the appellate courts, not involving changes to the rules, and to consult on proposed changes to technology related rules and policies for the trial courts where those changes may affect the appellate courts.

Some of the possible rules projects, as noted below, may be multi-year projects, with work on rules beginning while legislative changes are still being decided, to be completed after legislation has been enacted.

This memo provides a list of possible projects, separated into rules projects and non-rules projects. Many of the listed ideas have been considered by JATS in previous years, and action on those ideas deferred. JATS may decide that it is now the right time to proceed with work on some previously considered projects or it may decide that the time is still not ripe for decisions on some issues.

Possible JATS Projects for 2017

Rules Projects

1. **Bookmarking (previously considered):** The 2016 trial court rules modernization changes include a new requirement, added to rule 3.1110(f), that electronic exhibits be electronically bookmarked. (It requires that electronic exhibits “include electronic bookmarks with links to the first page of each exhibit and with book mark titles that identify the exhibit number or letter and briefly describe the exhibit.”) This issue was set aside by JATS for 2016, to give those courts new to e-filing (or not yet on e-filing) a chance to gain some experience with e-filing before participating in a decision as to what to require.
2. **Creating a requirement that exhibits submitted in electronic form be submitted in electronic volumes, rather than individually (previously considered, in connection with consideration of bookmarking requirements).** This was suggested in a comment by D’vora Tirschwell, a writ attorney at the First District, commenting on the 2016 appellate e-filing rules proposal.
3. **Rules for the handling of sealed or confidential materials that are submitted electronically (previously considered).** This was also set aside by JATS in 2016.
4. **Return of lodged electronic records (new project):** JATS may wish to consider creating rules similar to those being created for the trial courts. The trial court rule modernization changes made in 2016 amend rules 2.551(b) and 2.577(d)(4) to give the moving party ten days after a motion to seal is denied to notify the court if the party wants the record to be filed unsealed. If the clerk does not receive notification in ten days, the clerk must return the record, if lodged in paper form, or permanently delete it if lodged in electronic form. Rule 3.1302 is amended to allow the court to maintain other lodged materials – and if the court chooses not to do so, to require that they be returned, if on paper, or permanently deleted, if electronic, with a notice of the destruction sent to the party before destruction of the electronic record.
5. **Formatting of reporters’ transcripts (new project):** The California Court Reporters’ Association suggested, in their comments on the 2016 e-filing proposal, that there should be further requirements for formatting of electronic reporters’ transcripts, including hyperlinks and a requirement for an electronic signature. The Appellate Advisory Committee will be working with CCRA this year on drafting and advocating for legislation to amend the outdated and restrictive requirements Code of Civil Procedure section 271. As progress is made on legislative change, JATS may wish to begin work on corresponding changes to rule 8.144, which could then be put forward as a rules proposal in 2018 or thereafter.

Non-rule Projects

1. (New project) ITAC is looking to develop policies regarding the protection of private information in electronic court records, described as follows in the Annual Agenda for 2016:

(a) Continue development of a comprehensive statewide privacy policy addressing electronic access to court records and data to align with both state and federal requirements.

(b) Continue development of a model (local) court privacy policy, outlining the key contents and provisions to address within a local court's specific policy.

Work will be continuing in 2017 on the development of these policies (and of a privacy policy manual). JATS has indicated that it would like to be included in this project to develop privacy policies for the appellate courts. Please note that JATS ability to work on this project depends on the progress made in ITAC's work on the issue overall, as work on the policies for the appellate courts must be done in close cooperation with work on the policies for the trial courts.

2. (Continuation project) ITAC is looking at rules to govern certification of electronic records, standards for electronic signatures, and whether parties should have to submit paper copies of documents when filing electronically. (In the trial courts, some changes will require legislation, as there are statutory requirements for the trial courts regarding electronic filing, service and signatures. See Code of Civil Procedure section 1010.6.) As these changes move forward for the trial courts, JATS may wish to offer input on changes that will affect the appellate courts. This again is an area where JATS's work must wait until the project is moved forward by ITAC. In addition, this project may eventually result in rules work to be done by JATS. In future years, after ITAC has resolved these issues for the trial courts, JATS may wish to consider proposing changes to the appellate court rules on these issues.

Subcommittee Task

The subcommittee's task at the November 9th meeting is to determine which of these proposals should be addressed in the coming year, which should be deferred for consideration in future years, and which should not be pursued at all.

As time permits, the subcommittee may also wish to begin discussion of what specifically should be done on those projects which JATS chooses to pursue in 2017.



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

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

JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

MINUTES OF OPEN MEETING

February 11, 2016
3:00 PM – 4:30 PM

Teleconference

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

Advisory Body Members Absent: Ms. Kimberly Stewart

Others Present: Ms. Katherine Sher, Ms. Tara Lundstrom; Ms. Heather Anderson, Mr. Patrick O'Donnell and Ms. Julie Bagoye

OPEN SESSION

Call to Order and Roll Call

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

Approval of Minutes

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

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

JATS members considered the changes to rules and forms proposed for circulation in the Phase II Appellate Rules Modernization proposal, as discussed in Katherine's Sher's memorandum to JATS dated February 8, 2016, in the draft Invitation to Comment attached to that Memorandum, and in the proposed language for rule amendments and proposed new and revised forms attached to the memorandum. Ms. Sher suggested, with regard to the proposed new rule 8.12, regarding the format required for a computer-readable copy of a reporter's transcript, that the subcommittee consider placing the draft language in existing rule 8.144 (a), as 8.144 (a)(4), instead of creating a new rule. Ms. Sher further noted that the draft language had been revised to eliminate references to PDF format. Justice Mauro added that this change had been made based on the experience of the Third District Court of Appeal, whose local rules require PDF format, and where court reporters have asked for greater flexibility to allow them to use newer, improved programs instead. JATS approved the revised language and its placement in rule 8.144(a).

JATS approved the remaining proposed rule changes as shown in the draft rules in the meeting materials.

JATS then considered the proposed Rules Modernization changes to appellate forms. JATS approved the changes made throughout the forms to remove the language “optional” or “if available” when a form asks for an e-mail address or fax number. JATS approved the change to remove the integrated proof of service from several forms, the change to add an integrated proof of service to form APP-004, and the change to form MC-275, Petition for Writ of Habeas Corpus, adding instructions as to the number of copies to be filed when an attorney files the Petition electronically or when an unrepresented party files the petition.

JATS then considered specifically the proposed newly created forms for proof of electronic service. Ms. Sher asked JATS members to consider whether proof of electronic service should be on a separate form, or whether electronic service should be added to existing appellate proof of service forms and also whether information on electronic proof of service should be included in existing information forms or whether new informational forms should be created. Mr. Willenburg said that separate forms are less confusing to use. Mr. Lane asked why this would be so, and noted that currently several kinds of service are included on one proof of service form. Justice Mauro noted that when a litigant first enters a case, one form might be easier, depending on the length of that form, but that once someone is into a case, all documents are generally served and filed one way or the other, electronically or non-electronically, and it then is easier to have separate forms. Mr. O'Donnell noted that in the trial courts, when a combined proof of service form was created, it became long and confusing – and so now there are lots of separate forms, and one combined form which is not often used.

Ms. Lundstrom noted that however the proof of service forms are done, the time of service needed to be removed as to electronic service, as is proposed for the trial court proof of service forms.

Mr. Willenburg offered the following proposal: 1. Time of service should be removed from all electronic proof of service forms; 2. Separate appellate proof of service forms should be created; and 3. Existing information forms on proof of service should be revised to include information on proof of electronic service. JATS approved this proposal, and directed Ms. Sher to prepare revised proposed forms accordingly, with the subcommittee to review these forms by e-mail action.

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

JATS members then considered the appellate e-filing rules-practice consistency proposal, as discussed in Ms. Sher's memorandum dated February 8, 2016, in the draft Invitation to Comment attached to that Memorandum, and in the proposed language for rule amendments attached to the memorandum. Justice Mauro gave a brief summary of the purpose of the proposal: to get rid of outdated references, such as the language referring to e-filing pilot proposals; to put the rules into an order that makes more sense, and to revise the rules to reflect mandatory e-filing with potential opt-outs.

Mr. McGuire noted that the Supreme Court does not yet have e-filing, and does not have local rules. He asked how the Supreme Court would be able to opt out of the rule implementing mandatory e-filing. JATS members discussed the possibility of doing so by a miscellaneous court order to be posted on the court's website. Justice Siggins noted that the First District posts on its website miscellaneous orders for many of its e-filing requirements.

JATS members discussed the language of proposed rule 8.77(d), regarding court users who are unable to timely file documents because of technical problems with a court's e-filing system. Justice Mauro noted that the Third District's local rules allow the court to determine whether to accept a late filing in this situation. Mr. McGuire noted a related issue of what it means to require a filer to "demonstrate" that the filer attempted to file a document. After further discussion of possible approaches, including a discussion of appellate local rules that require a motion in this situation, JATS directed Ms. Sher to review appellate local rules and craft language requiring a motion to have a late filing accepted, with JATS to review the proposed language by e-mail action.

With regard to rule 8.78, on e-service, Justice Mauro then raised the question of whether non-parties who have been ordered to accept e-service should be included in references to e-service. Justice Siggins suggested soliciting comments on a provision that would state that for purposes of rule 8.78, the word party includes a non-party who has consented to or has been ordered to accept e-service or to e-serve documents, and taking out the references to non-parties elsewhere in the rule.

Ms. Lundstrom noted that there are changes proposed in those provisions of the trial court rules that parallel rule 8.78(f), regarding proof of electronic service, and that she would provide the language of those proposed changes to Ms. Sher for Ms. Sher to incorporate in the appellate rule proposal.

Justice Mauro then asked for discussion of whether to delete rule 8.79(a)(2)(B), which prohibits a court from ordering a party to electronically service documents if the party would be required to pay an electronic filing service provider (EFSP) fee and objects to doing so. Ms. Sher noted that this rule was adopted in recognition of the fact that the appellate courts cannot waive a fee that is charged by the EFSP, and so gave parties the opportunity to opt out when an EFSP fee was burdensome to the party. JATS members discussed the local rule of one appellate court that in its agreement with the EFSP, requires waiver of the EFSP fee for indigent parties. Justice Mauro then suggested that 8.79(a)(2)(B) be deleted, and that the Invitation to Comment ask for comments on this; Mr. Lane noted that the Invitation to Comment should also note that the rule will now apply only to e-service, not e-filing.

Ms. Sher then asked for clarification regarding the proposed deletion of rule 8.78(d), creating a presumption that when a party e-files documents, the address used for that e-filing is valid for e-service on that party. Justice Mauro noted that the provision could either be deleted entirely, or the language could be revised to clarify that when a notice has been filed by a party regarding the address to be used for e-service, the presumption does not apply. JATS agreed that the provision should be deleted entirely.

In order for the completed Invitation to Comment and revised proposed rules to be approved by JATS in time to be considered by the Appellate Advisory Committee at its February 29th meeting, JATS agreed that Ms. Sher's draft of the revisions to the forms included in the Rules Modernization proposal, and the rules of the Appellate E-filing Rules proposal, as discussed during this meeting, would be distributed to subcommittee members for consideration by e-mail action.

A D J O U R N M E N T

The meeting was adjourned at 4:30 PM.



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

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

JOINT APPELLATE TECHNOLOGY SUBCOMMITTEE

MINUTES OF OPEN MEETING

June 30, 2016
3:00 PM – 4:30 PM

Teleconference

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

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

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

OPEN SESSION

Call to Order and Roll Call

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

Approval of Minutes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A D J O U R N M E N T

The meeting was adjourned at 4:10 PM.