



# JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY  
ADVISORY COMMITTEE

[www.courts.ca.gov/itac.htm](http://www.courts.ca.gov/itac.htm)  
[itac@jud.ca.gov](mailto:itac@jud.ca.gov)

## ITAC RULES AND POLICY SUBCOMMITTEE

### MINUTES OF OPEN MEETING

October 1, 2019

12:10 PM – 12:45 PM

Teleconference

**Advisory Body Members Present:** Hon. Peter J. Siggins; Hon. Julie Culver; Hon. Samantha Jessner; Hon. Louis R. Mauro; Hon. Kimberly Menninger; Mr. Don Willenburg, Mr. Darrell Parker

**Advisory Body Members Absent:**

**Others Present:** JCC staff

#### 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 subcommittee reviewed and approved the minutes of the July 2, 2019 ITAC Rules & Policy Subcommittee meeting.

#### DISCUSSION AND ACTION ITEMS (ITEMS 1)

##### Item 1

##### Joint Ad Hoc Subcommittee on Remote Video Rules (Action Required)

Review a proposal to amend the ITAC 2019 annual agenda to form a joint ad hoc subcommittee to address the remote video recommendations.

**Presenter:** Hon. Peter Siggins, Chair, Rules and Policy Subcommittee  
Ms. Andrea Jaramillo, Attorney II, Legal Services

**Action:** Justice Siggins noted that to form a joint ad hoc subcommittee to address rule changes that this subcommittee would need to add the Remote Video Appearances and Civil Proceedings project to their annual agenda. The purpose of this meeting is to add this project.

**Motion to add Remote Video Appearances and Civil Proceedings to the Rules & Policy Subcommittee annual agenda.**

**Approved.**

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**ADJOURNMENT**

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There being no further business, the meeting was adjourned at 12:16 PM.

Approved by the advisory body on enter date.

# 13.1. Trial Court Rules and Statutes Revisions



**Highlight:** Amendments to Code of Civil Procedure sec. 1010.6, Penal Code sec. 1203.01, and rules 2.251, 2.255, 2.257, and 2.540 of the California Rules of Court were circulated for public comment and approved by ITAC.

Key Objectives	Status	Description
<p>(a) Proposals to amend statutes to support e-business. First, amend Code of Civil Procedure section 1010.6 to allow courts to recover actual costs of permissive electronic filing as they can with mandatory electronic filing, and clarify a provision for signatures made not under penalty of perjury. Second, amend Penal Code section 1203.01 to provide an alternative to mailing certain statements and reports.</p>	<p>In Progress</p>	<p>Amendments to Code of Civil Procedure sec. 1010.6 and Penal Code sec. 1203.01 were circulated for public comment. Following the comment period, they were approved by ITAC and forwarded for consideration by the Judicial Council.</p> <p>The Judicial Council will vote on whether to sponsor the proposed legislation at its November meeting.</p>
<p>(b) Proposals to amend the electronic filing and service rules to provide greater clarity and remove paper dependencies. First, amend rule 2.251 to clarify how notice of electronic service is to be given and provide standardized language for consent. Second, amend rule 2.257 to revise language on signatures of opposing parties, and make minor revisions consistent with Code of Civil Procedure section 1010.6.</p>	<p>Completed</p>	<p>Amendments to rules 2.251, 2.255, and 2.257 of the California Rules of Court were circulated for public comment. Following the comment period, they were approved by ITAC and forwarded for consideration by the Judicial Council.</p> <p>The Judicial Council approved the amendments at its September meeting.</p>
<p>(c) Proposals to amend rules on remote access to electronic records. Make minor amendments to rule 2.540 to add more clarity and additional local government entities.</p>	<p>Completed</p>	<p>Amendments to rule 2.540 of the California Rules of Court were submitted for public comment. Following the comment period, they were approved by ITAC and forwarded for consideration by the Judicial Council.</p> <p>The Judicial Council approved the amendments at its September meeting.</p>

## 13.2 Standards for Electronic Court Records as Data



**Highlight:** : The CEAC Records Management Subcommittee has determined standards are not needed at this time.

Key Objectives	Status	Description
<p>(a) CEAC Records Management Subcommittee – in collaboration with the Data Exchange Workstream governance body – to develop standards if needed to allow trial courts to maintain electronic court records as data in their case management systems to be included in the Trial Court Records Manual with input from the Court Information Technology Managers Forum (CITMF). Rules &amp; Policy Subcommittee to review.</p>	<p>Completed</p>	<p>The CEAC Records Management Subcommittee planned to add a section to the <i>Trial Court Records Manual</i> (TCRM), “if needed,” to provide standards for trial court records as data. The subcommittee has tentatively concluded such standards may not be necessary. The subcommittee will instead consider expanding and updating the general standards for electronic court records in the TCRM. The contemplated revisions, among other things, would acknowledge that electronic court records may include records in the form of data (for example, data submitted on fillable forms). This approach may be simpler, clearer, and less repetitive.</p>
<p>(b) Determine what statutory and rule changes may be required to authorize and implement the maintenance of records in the form of data; develop proposals to satisfy these changes.</p>	<p>Completed</p>	<p>Not needed at this time.</p>

# 13.3. Privacy Resource Guide



**Highlight:** The Privacy Resource Guide (PRG) has been published.

Key Objectives	Status	Description
Continue development of a comprehensive statewide privacy resource guide addressing, among other things, electronic access to court records and data, to align with both state and federal requirements (completed 2018)	Completed	
Continue development of court privacy resource guide, outlining the key requirements, contents, and provisions for courts to address within its specific privacy policy (completed 2018).	Completed	
(a) Circulate the draft guide for branch comment; revise as appropriate.	Completed	
(b) Finalize and seek approval of the guide by ITAC.	Completed	ITAC approved publication of the guide at their April 15, 2019 meeting.
Proposed updated 2019 objectives: (b) Revise and update the Privacy Resource Guide with new privacy related laws, rules, forms, standards and best practices on an annual basis with a projected publication date after January 1, 2020 to allow for inclusion of published rules and law effective as of January 1, 2020. (c) Monitor and analyze how the Privacy Resource Guide is being used for the calendar year 2019, and make recommendations for which Judicial Council entity will be responsible for maintaining and updating the Privacy Resource Guide beyond 2019.	Completed	ITAC approved these proposed updated objectives at their April 15 meeting. The Annual Agenda has been updated.



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
October 28, 2019	Please review
To	Deadline
Rules and Policy Subcommittee, Information Technology Advisory Committee	November 4, 2019
From	Contact
Andrea L. Jaramillo, Attorney Legal Services	Andrea L. Jaramillo 916-263-0991 phone <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>
Subject	
Potential Topics for 2020 Rule Cycle	

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The Information Technology Advisory Committee (ITAC) regularly recommends rules, forms, and legislative proposals to the Judicial Council to advance council goals consistent with the Strategic Plan for Information Technology. Proposals can originate from a variety of sources, including council staff, committee members, courts, other government bodies, and the general public. The purpose of this memorandum is to brief the Rules and Policy Subcommittee on suggestions received this year so the subcommittee can decide which, if any, should be developed for the 2020 rules cycle.

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## Suggestions Received this Year

This year, ITAC received suggestions to (1) amend the electronic filing and service rules of the California Rules of Court,<sup>1</sup> and (2) create a new form.<sup>2</sup> This memorandum discusses these two suggestions and includes staff recommendations.

### **1. Amend the California Rules of Court to indicate that an electronic filing service provider must allow the party to proceed with an electronic filing even if the party does not consent to receive electronic service**

*Suggested by:* Superior Court of California, County of Orange and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committee.

Under Code of Civil Procedure section 1010.6 (section 1010.6), which governs electronic filing and electronic service, one of the ways parties can consent to electronic service is by “manifesting affirmative consent through electronic means with the court or the court’s electronic filing service provider, and concurrently providing the party’s electronic service address with that consent for the purpose of receiving electronic service.” (§ 1010.6(a)(2)(A)(ii).) Section 1010.6 does not describe how to “manifest affirmative consent through electronic means.”

ITAC previously developed a proposal, which the Judicial Council approved in September 2018, that added language to rule 2.251(b) on how to “manifest consent through electronic means.” One way to do so through an electronic filing service provider (EFSP) is to agree to a term of service for filing that “clearly states that agreement constitutes consent” to receive electronic service. (Rule 2.251(b)(1)(C)(i).) Although the current rule implicitly allows EFSPs to include a term for electronic filers to agree to electronic service, it does not require them to do so. The rule is silent as to whether an EFSP that uses such a term for consent must also allow the filer to withhold that consent and still continue to use the EFSP’s electronic filing services.

This year, the Superior Court of Orange County and the Joint Rules Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committee recommended ITAC consider amending the rule to require EFSPs to allow parties to proceed with an electronic filing even if the party does not consent to receive electronic service.

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<sup>1</sup> All further rule references are to the California Rules of Court.

<sup>2</sup> ITAC also received recommendations from its Remote Video Appearances Workstream to develop legislation and rules on remote video appearances in civil proceedings. However, consistent with ITAC’s current annual agenda, that work will be done by a joint ad hoc subcommittee comprised of members of ITAC as well as members of Civil and Small Claims, Family and Juvenile Law, and Probate and Mental Health Advisory Committees.

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*Staff comments:* It may be worth developing a proposal for public comment because there are potential benefits to electronic filers, and the committee will be able to solicit feedback from EFSPs on feasibility. The suggested amendment would continue to allow an EFSP to include a term for consent to electronic service, but would require the EFSP to allow a filer to decline that term and continue with the electronic filing. As such, a filer would not need to seek out a different EFSP or file with paper if they did not want to consent to electronic service.

EFSPs are not required to include a term for electronic filers to agree to electronic service. For EFSPs that choose to do so, this would require them to provide filers with an option to withhold consent and proceed with an electronic filing. It is unknown what impact such a requirement would have on EFSPs, and the opportunity for public comment would shed light on whether it would present a significant issue.

## **2. Develop a form to capture consent to receive certain documents electronically under Penal Code section 1203.01**

*Suggested by:* Superior Court of California, County of Orange, and the Orange County Bar Association.

Earlier this year, ITAC circulated an invitation to comment with a proposal for Judicial Council–sponsored legislation to amend Penal Code section 1203.01 to allow courts to electronically deliver documents they are currently required to mail, subject to the consent of the recipient. The council will consider the proposal at its November 14, 2019 meeting.

The invitation to comment noted the proposal did not prescribe any particular method for how consent from the recipient would be documented. ITAC asked for specific comment on whether this should be addressed. The Superior Court of Orange County responded, stating, a “form could be helpful, especially for defendants represented by private counsel or defendants in pro per.”

In response to another request for specific comment on whether a mechanism was needed to address electronic transmissions that bounce back as undeliverable, the Orange County Bar Association similarly commented on the potential helpfulness of a form, which could “include alternative email/ mailing addresses in case the primary email or mailing address is not valid.”

*Staff comments:* Staff recommend against developing a form proposal at this time. There is no pressing need to create a form concurrent with the legislation. It would be premature to put the work into developing form because the legislation may not pass or may not pass in the current



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form. In addition, even if the legislation passes, it would be more advantageous to wait and see if a strong need for a statewide form arises once the legislation is in effect.

#### Subcommittee's Task

- Determine which proposal ideas, if any, staff should develop for the 2020 cycle.
- Determine any other action staff should take on proposals for the 2020 cycle, including rules, forms, or legislation.

#### Attachments and Links

1. Text of California Rules of Court, rule 2.251(b) with amendments effective January 1, 2020, page 5.
2. Text of amendment to Penal Code section 1203.01 the Judicial Council will consider sponsoring at its November 14, 2019 meeting, pages 6–7.
3. Link A: Code of Civil Procedure section 1010.6, [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1010.6&lawCode=CCP).
4. Link E: California Rules of Court, rule 2.255, [http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_255](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_255).

Rules 2.251, 2.255, and 2.257 of the California Rules of Court are amended, effective January 1, 2020, to read:

1 **Rule 2.251. Electronic service**

2  
3 (a) \* \* \*

4  
5 (b) **Electronic service by express consent**

6  
7 (1) A party or other person indicates that the party or other person agrees to  
8 accept electronic service by:

9  
10 (A) Serving a notice on all parties and other persons that the party or other  
11 person accepts electronic service and filing the notice with the court.  
12 The notice must include the electronic service address at which the  
13 party or other person agrees to accept service; or

14  
15 (B) Manifesting affirmative consent through electronic means with the  
16 court or the court’s electronic filing service provider, and concurrently  
17 providing the party’s electronic service address with that consent for  
18 the purpose of receiving electronic service. A party or other person may  
19 manifest affirmative consent by serving notice of consent to all parties  
20 and other persons and either:

21  
22 ~~(C) A party or other person may manifest affirmative consent under (B) by:~~

23  
24 (i) Agreeing to the terms of service ~~agreement~~ with an electronic  
25 filing service provider, which clearly states that agreement  
26 constitutes consent to receive electronic service ~~electronically~~; or

27  
28 (ii) Filing Consent to Electronic Service and Notice of Electronic  
29 Service Address (form EFS-005-CV).

30  
31 (2) \* \* \*

32  
33 (c)–(k) \* \* \*

34  
35 **Advisory Committee Comment**

36  
37 Subdivision (b)(1)(B). The rule does not prescribe specific language for a provision of a term of  
38 service when the filer consents to electronic service, but does require that any such provision be  
39 clear. *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005-  
40 CV) provides an example of language for consenting to electronic service.

Section 1203.01 of the Penal Code would be amended, effective January 1, 2021, to read:

1    **§ 1203.01**  
2

3    (a) Immediately after judgment has been pronounced, the judge and the district attorney,  
4    respectively, may cause to be filed with the clerk of the court a brief statement of their  
5    views respecting the person convicted or sentenced and the crime committed, together  
6    with any reports the probation officer may have filed relative to the prisoner. The judge  
7    and district attorney shall cause those statements to be filed if no probation officer's  
8    report has been filed. The attorney for the defendant and the law enforcement agency that  
9    investigated the case may likewise file with the clerk of the court statements of their  
10   views respecting the defendant and the crime of which he or she was convicted.

11   Immediately after the filing of those statements and reports, the clerk of the court shall  
12   mail a copy thereof, certified by that clerk, with postage prepaid, addressed to the  
13   Department of Corrections and Rehabilitation at the prison or other institution to which  
14   the person convicted is delivered. The clerk shall also mail a copy of any statement  
15   submitted by the court, district attorney, or law enforcement agency, pursuant to this  
16   section, with postage prepaid, addressed to the attorney for the defendant, if any, and to  
17   the defendant, in care of the Department of Corrections and Rehabilitation, and a copy of  
18   any statement submitted by the attorney for the defendant, with postage prepaid, shall be  
19   mailed to the district attorney.  
20

21   (b)(1) In all cases in which the judgment imposed includes a sentence of death or an  
22   indeterminate term with or without the possibility of parole, the clerk shall, within 60  
23   days after judgment has been pronounced, mail with postage prepaid, to the prison or  
24   other institution to which the person convicted is delivered, a copy of the charging  
25   documents, a copy of waiver and plea forms, if any, the transcript of the proceedings at  
26   the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded guilty  
27   or nolo contendere, and the transcript of the proceedings at the time of sentencing.  
28

29   (2) In all other cases not described in paragraph (1), the clerk shall mail with postage  
30   prepaid, to the prison or other institution to which the person convicted is delivered, a  
31   copy of the charging documents, a copy of the waiver and plea forms, if any, and upon  
32   written request by the Department of Corrections and Rehabilitation or by an inmate, or  
33   by his or her counsel, for, among other purposes on a particular case, appeals, review of  
34   custody credits and release dates, and restitution orders, the transcript of the proceedings  
35   at the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded  
36   guilty or nolo contendere, and the transcript of the proceedings at the time of sentencing.  
37

38   (c)(1) With the consent of the recipient expressed in writing or orally on the record, the  
39   clerk of the court may deliver the documents, or the data contained in the documents,  
40   described in subdivisions (a) and (b) by electronic means rather than by mail.  
41

1 (2) Notwithstanding paragraph (1), upon written request by a person convicted or by his  
2 or her counsel, the clerk shall also mail with postage prepaid, to the prison or other  
3 institution to which the person convicted is delivered, copies of the documents described  
4 in subdivisions (a) and (b).

5  
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7  
8