



JUDICIAL COUNCIL OF CALIFORNIA

INFORMATION TECHNOLOGY
ADVISORY COMMITTEE

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RULES & POLICY ADVISORY SUBCOMMITTEE

MINUTES OF OPEN MEETING

January 22, 2020
12:10 PM - 1:00 PM
Teleconference

Advisory Body Members Present: Hon. Peter J. Siggins, Chair; Hon. Julie Culver; Hon. Samantha Jessner; Hon. Louis R. Mauro; Mr. Don Willenburg

Advisory Body Members Absent: Hon. Kimberly Menninger; Mr. Darrel Parker

Others Present: Judicial Council 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 advisory body reviewed and approved the minutes of the November 4, 2019, Rules and Policy Subcommittee meeting.

There were no public comments.

DISCUSSION AND ACTION ITEMS (ITEM 1)

Item 1

Trial Court Rules and Statutes Revisions: Proposed Amendments to Amend the California Rules of Court (Action Required)

Consider whether to recommend circulating proposed amendments to 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.

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

Action: Ms. Jaramillo explained the suggested wording changes to rule 2.255 of the California Rules of Court. This change is to allow an optional terms of service for an electronic filer's consent to electronic service. The electronic service provider may include a term of service that clearly states the electronic filer's agreement to the term constitutes

consent to receive electronic service. The electronic filer's agreement to any such term must be optional. This will only apply to permissive electronic filers; local mandatory court rules will apply. Ms. Jaramillo will make changes to wording that states that an electronic service provider must allow electronic filing even if the filer doesn't consent. In addition, there would be a specific question to see if electronic filers could opt out of receiving documents electronically and to request if electronic service providers have any concerns. Ms. Jaramillo will make the proposed changes to rule 2.255 of the California Rules of Court and send the updates to subcommittee members via electronic vote. Once approved, the proposed change and memo will be sent to the Information Technology Advisory Committee for consideration.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:55 PM.

Approved by the advisory body on [enter date].



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date June 25, 2020	Action Requested Please review
To Information Technology Advisory Committee, Rules and Policy Subcommittee Hon. Peter J. Siggins, Chair	Deadline July 1, 2020
From Andrea L. Jaramillo, Attorney Legal Services, Judicial Council	Contact Andrea L. Jaramillo 916-263-0991 phone andrea.jaramillo@jud.ca.gov
Subject Rule Proposal: Review public comments and make recommendation on amending rule 2.255 of the California Rules of Court	

Background

This spring, the Information Technology Advisory Committee (ITAC) circulated a rule proposal for public comment to amend rule 2.255 of the California Rules of Court. The amendment would require an electronic filing service provider (EFSP) to allow an electronic filer to proceed with an electronic filing even if the electronic filer does not consent to receive electronic service.

Prior to January 1, 2019, the act of electronic filing alone could, by rule, also serve as consent to electronic service except for unrepresented parties, who had to expressly consent. Beginning January 1, 2019, the Legislature required express consent in all cases and no longer allowed the act of electronic filing alone to serve as consent. (Code Civ. Proc., § 1010.6(a)(2)(A)(i)–(ii).) To provide express consent, electronic filers could either file a form or could “manifest affirmative consent through electronic means.” (*Id.*, § 1010.6(a)(2)(A)(ii).) The Legislature did not provide a meaning for “manifest affirmative consent through electronic means.” To fill this gap, the

Judicial Council amended the rules of court to allow an electronic filer to consent by agreeing to a term with an EFSP that “clearly states that agreement constitutes consent” to receive electronic service. (Cal. Rules of Court, rule 2.251(b)(1)(B)(i).) The rules allow, *but do not require*, an EFSP to include such a term for its users. The rules did not specify whether an EFSP that chooses to include such a term must make it optional for the user. The proposed amendment specifies that that the term must be optional.

Discussion

Nine commenters responded to the invitation to comment. Most of the comments supported the proposed amendment, but one court raised concerns about workload and its case management system in response to the committee’s request for specific comments. All comments are included in the comment chart attached at pages 5 through 17. Staff will update the comment chart with proposed committee responses following the subcommittee’s discussion.

ITAC sought specific comments on whether electronic filers should be able to “opt out” of electronic service and this topic generated the most comments. Most commenters agreed that they should, but one court commenter stated they should not. Comments in support included the following reasons for their support:

- Opt-out reduces barriers to using electronic service.
- Opt-out improves access to courts.
- Electronic filers should be able to use any means legislatively permitted and it should not be up to a service provider that is not a party to the action.
- Electronic filers should be able to select whatever services benefit them.
- Some people may be able to submit an electronic filing, but not have regular access to technology in order to receive electronic service.

While most of the comments were supportive, one court commenter opposed opt out and stated “courts need to have the ability to electronically serve the parties with orders, notices, etc. . . . in efile cases. If the parties were allowed to efile and choose not to be electronically served, it would result in courts having to devise systems to serve in two forms, which is costly and difficult for staff.” The proposal would ensure EFSPs that include a term for electronic filers to agree to electronic service make that term optional. Because EFSPs are not required to include such a term at all and the proposal only impacts those that do, the court would be in the same situation as it describes when a filer uses an EFSP that does not include such a term.

The court also asked the following question in its comments: “Would the consent to service only apply to the parties or the court communication as well?” The court explained if it applies to court communication, it would impact the court’s case management system. In answer to the

court's question, the provision would apply to service, but not other forms of communication. This is a statutory requirement. Under Code of Civil Procedure section 1010.6(a)(3), if the court is required to serve a party with a document and electronic service is not mandated by court order or local rule, then the party must have consented to receive electronic service in the case before the court can electronically serve them. To ensure courts would have a way of knowing an electronic filer had consented to electronic service through an EFSP rather than through filing a form, the Judicial Council amended rule 2.255 last year to require the EFSP to transmit that information to the court.

The committee asked courts whether the proposal would provide a cost savings and what the implementation requirements would be. Two courts commented that it would result in increased costs for staff training and updates to case management systems. One of the courts commented there might be minimal savings associated with not having to process paper such as “the costs of stamping conformed copies and the postage required to return them by mail if the postage was not provided by the filing party.”

Subcommittee's Tasks

- Consider the comments received on the proposal.
- Decide whether to recommend the proposal for Judicial Council legislative sponsorship.

Attachments and Links

1. Text of proposed amendment to California Rules of Court, rule 2.255 at page 4.
2. Chart of comments at pages 5 through 17.
3. Code of Civil Procedure section 1010.6,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6
4. Rule 2.255 of the California Rules of Court,
https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_255

Rule 2.255 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Rule 2.255. Contracts with and responsibilities of electronic filing service providers**
2 **and electronic filing managers**

3
4 **(a)–(f) * * ***

5
6 **(g) Electronic filer not required to consent to electronic service**

7
8 (1) An electronic filing service provider must allow an electronic filer to proceed
9 with an electronic filing even if the electronic filer does not consent to
10 receive electronic service.

11
12 (2) This provision applies only to electronic service by express consent under
13 rule 2.251(b).
14

SPR20-28**Judicial Branch Technology: Electronic Filer Need Not Consent to Electronic Service** (Amend Cal. Rules of Court, rule 2.255)

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

	Commenter	Position	Comment	Committee Response
1.	<p>California Lawyers Association (CLA), Family Law by Executive Committee of the Family Law Section (FLEXCOM) of the CLA</p> <p>Justin M. O’Connell, FLEXCOM Legislation Chair</p> <p>Saul Bercovitch, Director of Governmental Affairs</p> <p>Sacramento, CA</p>	A	FLEXCOM agrees with this proposal.	
2.	<p>Child Support Directors Association (CSDA) by CSDA Judicial Council Forms Committee</p> <p>Ronald Ladage, Chair</p> <p>Sacramento, CA</p>	A	<p>The Committee agrees with the proposed revisions to Rule of Court 2.255. The proposed revision to California Rule of Court 2.255 accomplishes the stated purpose in that it allows electronic filers to utilize only the services of the EFSP that they wish to utilize, except when either a local rule of court directs that electronic service is mandatory when filing electronically or is specifically ordered by the court.</p> <p>The Committee believes that the proposal is feasible for the electronic filing service provider to offer a menu of services. Within the menu, the electronic filer should be able to select which services are of benefits to the electronic filed document and</p>	

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			should not be mandated to receive services that are of no or limited benefit to the electronic filer.	
3.	California Department of Child Support Services by Lara Racine, Attorney III Rancho Cordova, CA	A	<p>The California Department of Child Support Services (DCSS) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSAs), and our case participants. DCSS is in support of the proposal made in this invitation.</p> <p>REQUEST FOR SPECIFIC COMMENTS:</p> <p>1. Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal is clear as to intent and purpose. The background section was well stated, especially as to the many iterations of Code of Civil Procedure (CCP) Section 1010.6, the applicable California Rules of Court (CRC), and the proposed amendment to CRC 2.255 as it pertains to electronic filing and electronic service requirements.</p> <p>2. Should electronic filers be able to opt out of electronic service? Why or why not?</p> <p>Yes. Where not required or otherwise ordered, an electronic filer should have the option to decline electronic service. An</p>	

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			<p>individual that is filing a document via the electronic process may not know what rules apply to their particular circumstance. If they fall in the permissive category of e-filing and simply want to submit a document to the court on their case, they should be allowed to do that without also having to serve or accept documents electronically. Allowing a party to opt out of electronic service improves access to the court if that person is not interested in the electronic service process.</p> <p>GENERAL COMMENTS:</p> <p>DCSS agrees that this proposal may reduce barriers to electronic filing by ensuring electronic filers are able to opt out of electronic service when electronic service is not otherwise required by the court. The proposal will ensure litigants always have the option to electronically file at courts where electronic filing is permitted and thus increase access to the court. The proposal also provides clarification as to when the rule applies and to whom.</p> <p>DCSS is a current e-filer with several Superior Courts statewide. When our LCSAs e-file legal documents today, they do so via an established e-filing process</p>	

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			<p>vetted and approved by the Judicial Council. However, DCSS also files documents electronically using the electronic filing service providers on the court’s public facing e-filing portals. DCSS works with many e-filing vendors including but not limited to, Tyler, JTI, and in-house information technology staff. While some of our counties are able to accept and process electronic service requests, others do not have a fully established process. Emergency Rule 12 will likely expand the ability of the local counties to accept and serve legal filings electronically, but eventually that rule may expire and the opt in mechanism for electronic service will once again apply.</p> <p>This proposal is more important from an access perspective for those filers that are not represented by an attorney and who are permitted to e-file, although are not required to participate in the process. Allowing this population of users to avail themselves to e-filing but not e-service, and making the rule clear as to intent, encourages the use of technology while not requiring participation in all aspects, which may otherwise deter some users. Further definition regarding the procedures required in CCP 1010.6 is always welcome, and explicit rules of court</p>	

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			help facilitate the understanding of the entire electronic process.	
4.	Orange County Bar Association by Scott B. Garner, President Newport Beach, CA	A	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal will require electronic filing services to update their forms to comply with the statutory changes to Code of Civil Procedure Section 1010.6.</p> <p>Should electronic filers be able to opt out of electronic service? Why, or why not?</p> <p>Yes. Conceivably some persons who are required to utilize electronic filing services may not have regular access to a reliable electronic means to receive service. Also, cyberspace does not always deliver documents properly, and mistakes can be made in attempts to effect electronic service. A party should have the option to avoid these types of problems by withholding consent.</p> <p>For Electronic Filing Service Providers, is the proposal feasible?</p> <p>Yes. It appears all that would be required is for EFSPs to add an additional check box to their forms as to whether or not a party consents to electronic service in those</p>	

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			proceedings wherein that option is available.	
5.	Superior Court of Orange County by Juvenile Court Division Linda Contreras, Administrative Analyst I	NI	Does the proposal appropriately address the stated purpose? Yes. Should electronic filers be able to opt out of electronic service? Why or why not? Yes, electronic filers should be able to opt out of electric service. It may reduce the barriers to electronic filing. For EFSPs, is the proposal feasible? Yes, the providers who are impacted by this change can remove the check box that identifies consent to electronic service, or they can change the functionality of the box so that it does not preclude the processing of documents if the box remains unchecked. Would the proposal provide cost savings? If so, please quantify. None identified at this time. Would there be implementation requirements for courts? If so, what would they be— for example, training staff (please	

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			<p>identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems?</p> <p>Case management system may need updates to capture or record who is opting out of e-service. Additionally, as a result of any system updates staff training will be needed.</p>	
6.	Superior Court of Orange County by Family Law Division Vivian Tran, Administrative Analyst	NI	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes</p> <p>Should electronic filers be able to opt out of electronic service? Why or why not?</p> <p>Yes, electronic filers should be able to opt out of electric service. They are entitled to effectuate service by any means as described by the legislature. If there is no requirement per code or by rules of court that mandate electronic service of a document, then the EFSP should not be able to impose this restriction. Some courts have requirements regarding electronic filing. A filer would not be able to comply with the requirements if they were denied the opportunity to file electronically due to their choice not to accept electronic service of documents. The way a party receives</p>	

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			<p>service should not be determined by a service provider who is not a party to the action.</p> <p>For EFSPs, is the proposal feasible?</p> <p>Yes, the providers who are impacted by this change can remove the check box that identifies consent to electronic service, or they can change the functionality of the box so that it does not preclude the processing of documents if the box remains unchecked.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>No, any potential cost savings is likely minimal. It is a possibility that the proposed change would increase the number of electronic filings received by the court and reduce the number of paper filings received by mail. This could save on the costs of stamping conformed copies and the postage required to return them by mail if the postage was not provided by the filing party.</p> <p>Would there be implementation requirements for courts? If so, what would they be— for example, training staff (please identify position and expected hours of</p>	

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			<p>training), revising processes and procedures (please describe), or modifying case management systems?</p> <p>Case management system may need updates to capture or record who is opting out of e-service. Additionally, as a result of any system updates staff training will be needed.</p>	
7.	Public Law Center by Leigh E. Ferrin, Director of Litigation and Pro Bono Santa Ana, CA	A	<p>On a regular basis, but particularly over the last three months, PLC has worked with many self-represented litigants who may be able to file electronically, either through a legal services organization like PLC, or, once the stay-at-home orders are lifted, at a community center or local library. However, these same litigants often do not have regular access to an email address. Some litigants have no email address at all, others may only be able to check their email once a week or less frequently. This is particularly true now, during the stay-at-home orders, as people are more isolated now than ever and legal services is providing more services remotely as well. For instance, PLC currently assists individuals with drafting declarations to support their domestic violence restraining orders. PLC also assists these litigants with filing, in pro per, when the litigant is unable to file on their own. In these instances, it would be particularly valuable for those</p>	

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			<p>litigants to still receive service by mail, rather than being required to consent to electronic service.</p> <p>PLC has one additional suggestion, which is to find a way for the filing services to verify the address, maybe through USPS as many online retailers do, to ensure that the address entered in the electronic filing system is a correct address.</p>	
8.	Superior Court of San Diego by Mike Roddy, Executive Officer	NI	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Should electronic filers be able to opt out of electronic service? Why or why not?</p> <p>No. The courts need to have the ability to electronically serve the parties with orders, notices, etc..., in efile cases. If the parties were allowed to efile and choose not to be electronically served, it would result in courts having to devise systems to serve in two forms, which is costly and difficult for staff.</p> <p>For EFSPs, is the proposal feasible?</p> <p>Defer to EFSPs.</p>	

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			<p>Would the proposal provide cost savings? If so, please quantify.</p> <p>No, as set forth above, if parties were able to choose manner of service, it would increase costs to the court and defeat the savings from e-filing.</p> <p>Would there be implementation requirements for courts? If so, what would they be—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems?</p> <p>Would the consent to service only apply to the parties or the court communication as well? If it applies to service between the parties, minimal impact. However, if it applies to court communication, we would need to have development added to CCMS V-3 that would allow the recording of expressed consent somewhere on the participants' tab, which would result in a significant impact. It would also increase costs in cases because staff would have to serve in potentially two forms, which will take training, time, and significantly add to the costs incurred by the court to provide notice.</p>	

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9.	Superior Court of Orange County by Training and Analyst Group (TAG)	NI	<p>General Comments</p> <p>This ITC proposal was requested in part by OCSC.</p> <p>Request for Specific Comments</p> <p>1. Does the proposal appropriately address the stated purpose?</p> <p>Yes</p> <p>2. Should the electronic filers be able to opt out of electronic service? Why or why not?</p> <p>We defer to the Information and Technology Advisory Committee</p> <p>3. For EFSPs, is the proposal feasible?</p> <p>Yes, it is feasible as it would only require minimal system updates.</p> <p>4. Would the proposal result in costs or savings to the court? If so, please quantify.</p> <p>The court would have to implement a mechanism for monitoring parties who opt out of e-service. This would result in additional costs to update the case</p>	

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	Commenter	Position	Comment	Committee Response
			<p>management system and to train staff accordingly.</p> <p>5. What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>This would require staff training and system updates to ensure notice is provided according to preference.</p>	

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