

1 **Rule 2.519. Remote access by a party's attorney**

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3 **(a) Remote access generally permitted**

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5 (1) A party's attorney may have remote access to electronic records ~~in the party's~~
6 ~~actions or proceedings~~ under this rule or under rule 2.518. If a party's
7 attorney gains remote access under rule 2.518, the requirements of rule 2.519
8 do not apply.
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10 *Staff comments: The above change is to account for the broader access afforded under*
11 *new subdivision (b)(2), below.*

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13 (2) If a court notifies an attorney of the court's intention to appoint the attorney
14 to represent a party in a criminal, juvenile justice, child welfare, family law,
15 or probate proceeding, the court may grant remote access to that attorney
16 before an order of appointment is issued by the court.
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18 **(b) Level of remote access**

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20 (1) A party's attorney may be provided remote access to the same electronic
21 records in the party's actions or proceedings that the party's attorney would
22 be legally entitled to view at the courthouse.
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24 (2) An attorney representing a party in a criminal action may be provided remote
25 access to any electronic criminal records that the attorney would be legally
26 entitled to view at the courthouse.
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28 *Staff comments: With the above change, attorneys representing parties in criminal cases*
29 *will not be limited to their own party's electronic criminal records. This is consistent with*
30 *what the California Attorneys for Criminal Justice sought in their original proposal.*

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32 **(c) Terms of remote access applicable to an attorney who is not the attorney of**
33 **record**

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35 Except as provided in subdivision (b)(2), an~~Att~~ attorney who represents a party, but
36 who is not the party's attorney of record in the party's actions or proceedings, may
37 remotely access the party's electronic records, provided that the attorney:
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39 *Staff comments: The addition of subdivision (b)(2) would allow attorneys representing*
40 *criminal defendants to access any remote electronic criminal records they could view at*
41 *the courthouse. As such, the provisions of subdivision (c) will not apply to such access.*
42 *Subdivision (c) is focused on access to a party's electronic records with the party's*
43 *consent.*

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- (1) Obtains the party’s consent to remotely access the party’s electronic records; and
- (2) Represents to the court in the remote access system that he or she has obtained the party’s consent to remotely access the party’s electronic records.

(d) Terms of remote access applicable to all attorneys

- (1) ~~A party’s~~ An attorney may remotely access the electronic records only for the purpose of assisting ~~the a~~ party with the that party’s court matter.
- (2) ~~A party’s~~ An attorney may not distribute for sale any electronic records obtained remotely under the rules in this article. Such sale is strictly prohibited.
- (3) ~~A party’s~~ An attorney must comply with any other terms of remote access required by the court.
- (4) Failure to comply with these rules may result in the imposition of sanctions, including termination of access.

Staff comments: Rules and Policy Subcommittee recommended the above revisions to subdivision (d)(1)-(3) at its February 23, 2022, meeting. The changes are to ensure that subdivision (d) is sufficiently comprehensive in its language and covers attorneys who may be accessing electronic records under subdivision (b)(2), which does not limit attorneys to records of the party they are representing.

Advisory Committee Comment

Subdivision (c). An attorney of record will be known to the court for purposes of remote access. However, a person may engage an attorney other than the attorney of record for assistance in an action or proceeding in which the person is a party. For example, a party may engage an attorney to (1) prepare legal documents but not appear in the party’s action (e.g., provide limited-scope representation); (2) assist the party with dismissal or sealing of a criminal record when the attorney did not represent the party in the criminal proceeding; or (3) represent the party in an appellate matter when the attorney did not represent the party in the trial court. Subdivision (c) provides a mechanism for an attorney not of record to be known to the court for purposes of remote access.

Because the level of remote access is limited to the same court records that an attorney would be entitled to access if he or she were to appear at the courthouse, an attorney providing undisclosed

- 1 representation would only be able to remotely access electronic records that the public could
- 2 access at the courthouse. The rule essentially removes the step of the attorney having to go to the
- 3 courthouse.

DRAFT