



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 25, 2013

Title

Judicial Administration: Repeal Rules
Mandating Use of Recycled Paper

Agenda Item Type

Action Required

Effective Date

January 1, 2014

Rules, Forms, Standards, or Statutes Affected

Repeal Cal. Rules of Court, rules 1.22, 2.101,
2.131, and 10.503; and amend rules 1.6,
3.1368, 8.144, 8.204, 8.804, 8.838, 8.883,
8.928, and 10.614.

Date of Report

September 10, 2013

Recommended by

Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair

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Executive Summary

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend the elimination of all California Rules of Court mandating use of recycled paper—those rules addressed to courts as well as those addressed to parties. The statutory mandate that courts ensure at least 50 percent of reportable purchases, including paper products, are recycled products would remain in effect. This proposal was originally made by the Superior Court of Orange County, as one of the suggestions that the Court Executives Advisory Committee submitted to the Rules and Project Committee of the Judicial Council to achieve cost savings and efficiencies.

Recommendation

The Civil and Small Claims Advisory Committee and Appellate Advisory Committee jointly recommend that the Judicial Council eliminate all provisions in the California Rules of Court mandating the use of recycled paper, effective January 1, 2014, as follows:

1. Repeal the following rules in their entirety:
 - Rule 1.22 (Recycled paper), pertaining to original documents filed or served in actions in *all* courts;
 - Rule 2.101 (Use of recycled paper; certification by attorney or party), pertaining to documents filed or served in actions in *trial* courts;
 - Rule 2.131 (Use of recycled paper), pertaining to forms filed in *trial* courts; and
 - Rule 10.503 (Use of recycled paper by all courts), pertaining to all paper used by either the trial or appellate courts.

2. Amend the following rules to remove the provisions about recycled paper, as follows:
 - Rule 1.6. (Definitions and use of terms): delete paragraph (22), defining “recycled”;
 - Rule 3.1368 (Paper format): delete (a)(1), pertaining to CEQA administrative records;
 - Rule 8.144 (Form of the record): amend (a)(1)(A) and (c)(2), pertaining to civil appeals in the Courts of Appeal;
 - Rule 8.204 (Contents and form of briefs): amend (b)(1) and (10), pertaining to civil appeals in the Courts of Appeal;
 - Rule 8.804 (Definitions): delete paragraph (20), defining “recycled” as it pertains to cases in the superior court appellate division;
 - Rule 8.838 (Form of the record): amend (c)(2), pertaining to civil appeals in the superior court appellate division;
 - Rule 8.883 (Contents and form of briefs): amend (c)(1), pertaining to limited civil and misdemeanor appeals;
 - Rule 8.928 (Contents and form of briefs): amend (c)(1), pertaining to infraction appeals; and
 - Rule 10.614 (Local court forms): delete paragraph (7).

The text of the repealed and amended rules is set forth at pages 8–14.

Previous Council Action

Twenty years ago, the Judicial Council adopted rules requiring parties and courts to use recycled paper for court-related documents, rules that have remained essentially unchanged since that time. Parties must use recycled paper for all original documents filed with the trial and appellate courts, as well as all copies served on other parties. (Cal. Rules of Court, rule 1.22.)¹ Judicial

¹ All rules referred to hereafter are California Rules of Court. This rule, currently in the chapter on service and filing of papers in all courts, is essentially repeated in rules regarding the form and format of papers filed in the trial courts and briefs in the appellate courts.

Council and local forms filed with the courts must be on recycled paper. (Rules 2.131 and 10.614.) All courts must use recycled paper for all uses for which such paper is practically available. (Rule 10.503.)² And clerk's and reporter's transcripts for civil appeals and all appeals in the appellate division of superior court must be on recycled paper. (Rule 8.144.)

Originally adopted in 1993, the rules were renumbered effective January 2007 as part of the general rules reorganization. In addition, that same year the council amended the definition of "recycled paper" (rule 1.6(22)) to incorporate the definition used for recycled paper in the Public Contracts Code, requiring 30 percent postconsumer content, a somewhat more stringent standard than used previously. The rules applying to briefs and records in the appellate division of superior court, including use of recycled paper, were reorganized effective 2009. (Rule 8.800 et seq.) In all other respects, the rules described above remain essentially as they were originally adopted, mandating the use of recycled paper by the courts and by parties in both trial and appellate courts when filing or serving papers.

The rule mandating the use of recycled paper for the administrative record in California Environmental Quality Act cases was adopted effective 2010, and has not been changed since that time. (Rule 3.1368.)

Rationale for Recommendation

This proposal originated from Superior Court of Orange County, which sought to eliminate added costs to the courts of using recycled paper versus other forms of paper and to stop what the proponent described as micromanagement of court operations.

Under statute, at least 50 percent of the paper purchased by courts must be recycled paper. In March 2011, the Legislature enacted the Judicial Branch Contracting Law, requiring all courts throughout the state, the Judicial Council, and the Administrative Office of the Courts to comply with provisions of the Public Contract Code that apply to state agencies and departments and are related to the procurement of goods and services. (Pub. Contract Code, § 19204(b).) These provisions include the requirement that at least 50 percent of reportable purchases are recycled products, including categories covering paper products, office supplies, office products, and a wide range of other products used by courts. (Pub. Contract Code, § 12203; see also *Judicial Branch Contracting Manual*, ch. 3, § 3.3(A), "Utilizing Recycled Content Products."³)

The current California Rules of Court go further, requiring courts to use recycled paper in virtually all cases. When the rules requiring use of recycled paper were first adopted by the council, the issue of cost was also raised by those objecting to the rule. At that time, the Sierra Club Legal Defense Fund, the group that originally proposed rules mandating use of recycled

² A similar rule, applying to the Administrative Office of the Courts, was adopted in 1994 along with the other rules described here, but was eliminated during a major reorganization of the rules relating to the Judicial Council and Administrative Office of the Courts in 1999.

³ See pertinent excerpt of manual in Attachment A.

paper, submitted evidence that recycled paper was available for the same cost as non-recycled paper. Court administrators state that this is no longer true, and that courts would save money by not being required to use recycled paper.⁴ The issue is therefore one of balancing the social benefit of using recycled paper and advancing statewide efforts to reduce waste (beyond the current statutory mandate) against the higher cost of such paper in the fiscal crisis the courts are currently experiencing. The committees concluded that the balance weighs in favor of eliminating the more extensive mandate in the current rules.

Elimination of rules mandating *courts'* use of recycled paper

Rule 10.503 mandates that all courts use recycled paper for all purposes except for uses for which recycled paper is not practically available. In addition rule 8.144, addressing the form and format of the clerk's transcripts in appellate cases (including, by reference to this in rule 8.838, cases in the appellate division of superior court), mandates that courts produce those records on recycled paper and provides that covers of recycled card stock are preferred. The committees recommend repealing the requirement in rule 10.503 that courts must use recycled paper for all purposes⁵ and amending rules 8.144 and 8.838 to remove the requirement and preference for recycled paper.

The recommended repeal and amendment of the rules mandating the use of recycled paper will cut in half the amount of recycled paper courts are required to purchase. Courts will still have to comply with the statewide statutory mandate for governmental agencies to use recycled paper. Therefore, even if the council repeals all rules of court mandating use of recycled paper, courts will continue to be required by statute to buy recycled paper for at least 50 percent of their paper purchases.

The committees concluded that in light of the stringent budget reductions currently being implemented by the courts, the requirement placed on courts by statute is sufficient to further the social benefits of reducing waste through use of recycled paper.

Elimination of rules mandating *parties'* use of recycled paper

Having concluded that the rule mandating that courts use recycled paper was overly burdensome and should be repealed, the advisory committees turned to the rules mandating that parties use recycled paper for all filings and service copies. The committees concluded that if the mandate on the court is removed, fairness dictates that the mandate on the parties should be repealed at the same time.

⁴ Staff research has confirmed that recycled paper is more expensive than non-recycled paper on the retail level. For example, in spring 2013, the price of a 5,000-sheet case of 20-pound basic copy/printer paper from Office Depot or Staples was \$41.99, while the price of equivalent paper made from 30% postconsumer material (the standard for "recycled" paper under the current rules of court) was \$47.99.

⁵ The Appellate Advisory Committee is in favor of amending this rule to encourage additional use of recycled paper by the courts, which is discussed in the comment section below. The committee may consider proposing that such a provision be circulated for public comment in the future.

The rules of court currently require that parties use recycled paper for documents they file in a trial or appellate court and for copies of those document that they serve on other parties. (Rule 1.22(a).)⁶ The attorney, party, or other person filing or serving a document certifies, by the act of filing or service, that the document was produced on paper purchased as recycled. (Rule 1.22(b).) The rule does not mandate enforcement by the courts, and the committees determined that the mandate that parties use recycled paper is seldom, if ever, enforced by courts. Further, they concluded that attempting to enforce the rule on a regular basis would be an additional and very heavy burden on an already overburdened court system. The committees concluded that it was not good policy to keep rules on the books that are not enforced and therefore recommend that the mandate for parties’ use of recycled paper also be removed.

The committees also considered the fact that, with the removal of the mandate on the court to use recycled paper for all purposes, courts might not use recycled paper to produce Judicial Council or local court forms—forms that courts regularly provide to parties. Therefore, when a party files or serves completed forms received from a court, it would be impossible for the party to know whether he or she is complying with the rule to use recycled paper. (See rules 2.131 and 10.614.) The committees concluded this was yet another reason to remove the recycled paper mandate from parties at the same time it is removed from the courts.

Comments, Alternatives Considered, and Policy Implications

Seven comments were received, all at least partly in agreement with the proposal.⁷ The Superior Court of Los Angeles County, Superior Court of San Diego County, and California Judges Association (CJA), along with an individual attorney commentator, agree with the proposal as circulated, with CJA noting that the cost reduction measures were appropriate “[i]n light of the dire circumstances of our courts.” The other commentators agreed with the proposal but sought some modification, each of which are described below.

Reference to statutory requirement

The Orange County Bar Association agreed with the proposal generally, but recommended that the rules be further modified to reflect the statutory requirement that at least 50 percent of the courts’ paper purchases be recycled paper, because elimination of the requirement to use recycled paper would be “a misstatement of the law.” The committees considered this point, but noted that the statutory requirement imposed on the court is set out clearly in the *Judicial Branch Contracting Manual*, ch. 3, § 3.3(A), “Utilizing Recycled Content Products,” which not only describes the statutory requirement for purchasing from recycled sources, but expressly includes

⁶ This rule is reiterated in the rules regarding form and format of papers filed with the courts. See rule 2.101(a) (papers, documents, and exhibits filed with a trial court), rule 2.131 (forms filed with a trial court), rule 8.204 (briefs in Courts of Appeal), rule 8.883 (briefs in limited civil appeals and misdemeanors), 8.928 (briefs in infraction appeals). This proposal would also repeal or amend each of those rules.

⁷ A chart summarizing the comments and the committees’ responses is attached at pages 15–17. The Joint Rules Working Group of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee declined to comment on the proposal.

paper purchases in its description. The committees concluded that there is no need to repeat statutory requirements within the rules, which should be a supplement to, not duplication of, statutory provisions.

Encouragement for continued use of recycled paper

The State Bar's Committee on Administration of Justice supported the proposed repeal, but proposed that the use of recycled paper should still be encouraged, by rule or otherwise.

The Appellate Advisory Committee concluded that such support should be included in the rules of court, and proposed amending, rather than completely repealing, rule 10.503, the basic rule in title 10 requiring all courts to use recycled papers for all matters, to include a statement encouraging the use of recycled paper by the courts where economically feasible.

While the Civil and Small Claims Advisory Committee does support the social policy of using recycled paper, it disagreed that such encouragement should be included in a rule. That committee concluded that the rules of court were not an appropriate place to include a statement of support for a particular policy (rather than a mandate), particularly at the same time that rules implementing such policy are being repealed. The committee did consider the potential of including such a statement in an advisory committee comment, but since it is recommending that rule provisions mandating use of recycled paper be repealed, there would be no place in the rules to make such a comment.

The advisory committees took their alternative recommendations on rule 10.503 to the council's Rules and Projects Committee (RUPRO), with the Civil and Small Claims Advisory Committee recommending that the rule be repealed entirely, leaving only the statutory requirements in place, and the Appellate Advisory Committee recommending that the rule be amended to no longer require, but still encourage, the courts to use recycled paper even beyond the statutory requirements when economically feasible. RUPRO recommended that the proposal include the repeal of the rule entirely, at least at this time. Should the Appellate Advisory Committee decide to proceed with the proposal to include a statement of support for recycling in the rules of court, it will return to RUPRO.

Continued mandate that *parties* use recycled paper

Mr. Fred Garcia, of the Assurance Detective Agency, agreed with the proposal as applied to courts, but not to parties, proposing that the rules mandating recycled paper should stay in effect for represented parties, including public agencies and officials, although not for self-represented litigants. The committees considered removing the mandate from the courts alone, leaving in place the rules requiring parties to file and serve all documents on recycled paper. The groups concluded, however, that the rules on use of recycled paper should be the same for both courts and parties. In addition to considerations of fairness, the committees looked to the difficulty in enforcing the rule, and the complexity of requiring parties to file forms on recycled paper even while courts were not providing the forms on recycled paper.

Alternatives considered

In addition to the alternatives proposed by commentators, the committees considered two other alternatives to this proposal.

Alternative 1: Take no action. The committees recognized that the council originally adopted these rules to advance the statewide goal of reducing waste, and considered not making any changes to the rules. However, as described above, the committees concluded that in light of the current fiscal crisis in the courts and the existing statutory mandate that courts include recycled paper as at least half of the paper they procure, the rules, and rule provisions, mandating courts' use of such paper for all purposes should be eliminated.

Alternative 2: Temporarily suspend mandate on courts. The committees considered a proposal to suspend the mandate on courts to use recycled paper for three or four years, until court budgets improved. While some members of the groups originally preferred this proposal, the majority concluded that such a decision would have to be revisited in the future because budgetary constraints of some kind are likely to always exist; therefore it made sense to make the decision now rather than postponing it. None of the commentators suggested that this alternative be implemented.

Implementation Requirements, Costs, and Operational Impacts

This proposal would not impose any implementation requirements or operational costs on courts or others, and should provide savings to the courts. The only cost will be the indirect one arising from the potential burden on society from additional waste generated because of courts and parties reducing the amount of recycled paper they use.

Attachments

1. Cal. Rules of Court, rules 1.22, 2.101, 2.131, 1.6, 3.1368, 8.144, 8.204, 8.804, 8.838, 8.883, 8.928, 10.614, and 10.503, at pages 8–14
2. Comments chart, at pages 17–19
3. Attachment A: Excerpt from *Judicial Branch Contracting Manual*

Rules 1.22, 2.101, 2.131, and 10.503 of the California Rules of Court are repealed; and rules 1.6, 3.1368, 8.144, 8.204, 8.804, 8.838, 8.883, 8.928, and 10.614 are amended, effective January 1, 2014, to read:

1 **Title 1. Rules Applicable to All Courts**

2
3 **Chapter 1. Preliminary Rules**

4
5
6 **Rule 1.6. Definitions and use of terms**

7
8 As used in the California Rules of Court, unless the context or subject matter otherwise
9 requires:

10
11 (1)–(21) * * *

12
13 ~~(22) “Recycled” as applied to paper means “recycled printing and writing paper” as~~
14 ~~defined by section 12209 of the Public Contract Code.~~

15
16 ~~(2322)~~ “California Courts Web Site” means the Web site established by the Judicial
17 Council that includes news and information, reference materials, rules and forms,
18 and a self-help center. The address is: *www.courts.ca.gov*.

19
20
21 **Chapter 3. Service and Filing**

22
23 ~~Rule 1.22. Recycled paper~~

24
25 ~~(a) — Use of recycled paper required~~

26
27 ~~Recycled paper, as defined in rule 1.6, must be used for all original papers filed~~
28 ~~with the trial and appellate courts and for all copies of papers, documents, and~~
29 ~~exhibits, whether filed with the courts or served on other parties.~~

30
31 ~~(b) — Certification~~

32
33 ~~Whenever the use of recycled paper is required by these rules, the attorney, party,~~
34 ~~or other person filing or serving a document certifies, by the act of filing or service,~~
35 ~~that the document was produced on paper purchased as recycled.~~

36
37
38 **Title 2. Trial Court Rules**

39
40 **Division 2. Papers and Forms to Be Filed**

1
2
3 **Chapter 1. Papers**

4 **Rule 2.101. Use of recycled paper; certification by attorney or party**

5 **(a) — Use of recycled paper**

6 Recycled paper must be used for the following:

7
8 (1) — All original papers filed with the court and all copies of papers, documents,
9 and exhibits, whether filed with the court or served on other parties; and

10
11 (2) — The original record on appeal from a limited civil case, any brief filed with
12 the court in a matter to be heard in the appellate division, and all copies of
13 such documents, whether filed with the court or served on other parties.

14
15 **(b) — Certification**

16
17 Whenever recycled paper must be used under the rules in this chapter, the attorney,
18 party, or other person filing or serving a document certifies, by the act of filing or
19 service, that the document was produced on paper purchased as recycled.

20
21 **Chapter 2. Forms**

22
23 **Rule 2.131. Recycled paper**

24
25 All forms and copies of forms filed with the court must use recycled paper as defined in
26 rule 1.6.

27
28
29 **Title 3. Civil Rules**

30
31 **Division 11. Law and Motion**

32
33 **Chapter 7. Petitions Under the California Environmental Quality Act**

34
35 **Rule 3.1368. Paper format**

36
37 **(a) Requirements**

38
39 In the paper format of the administrative record lodged in the court in a proceeding
40 brought under the California Environmental Quality Act:

41
42 (1) — The paper must be recycled;

1 ~~(2)~~(1) Both sides of each page must be used;

2
3 ~~(3)~~(2) The paper must be opaque, unglazed, white or unbleached, 8 1/2 by 11
4 inches, and of standard quality no less than 20-pound weight, except that
5 maps, charts, and other demonstrative materials may be larger; and

6
7 ~~(4)~~(3) Each page must be numbered consecutively at the bottom.
8

9 **(b) * * ***

10
11
12
13 **Title 8. Appellate Rules**

14
15 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

16
17 **Chapter 2. Civil Appeals**

18
19 **Article 2. Record on Appeal**

20
21 **Rule 8.144. Form of the record**

22
23 **(a) Paper and format**

24
25 (1) In the clerk's and reporter's transcripts:

26
27 (A) The paper must be white or unbleached, ~~recycled~~, 8 1/2 by 11 inches,
28 and of at least 20-pound weight;

29
30 (B)-(E) * * *

31
32 ~~(2)~~-(3) * * *

33
34 **(b) * * ***

35
36 **(c) Binding and cover**

37
38 (1) * * *

39
40 (2) Each volume's cover, ~~preferably of recycled stock~~, must state the title and
41 trial court number of the case, the names of the trial court and each
42 participating trial judge, the names and addresses of appellate counsel for

1 each party, the volume number, and the inclusive page numbers of that
2 volume.

3
4 (3) * * *

5
6 (d)–(f) * * *

7
8
9 **Article 3. Briefs in the Court of Appeal**

10
11 **Rule 8.204. Contents and form of briefs**

12
13 (a) * * *

14
15 (b) **Form**

16
17 (1) A brief may be reproduced by any process that produces a clear, black image
18 of letter quality. The paper must be white or unbleached, ~~recycled~~, 8 1/2 by 11
19 inches, and of at least 20-pound weight.

20
21 (2)–(9) * * *

22
23 (10) The cover, ~~preferably of recycled stock~~, must be in the color prescribed by
24 rule 8.40(b) and, in addition to providing the cover information required by
25 rule 8.40(c), must state:

26
27 (A)–(D) * * *

28
29 (11) * * *

30
31 (c)–(e) * * *

32
33
34 **Division 2. Rules Relating to the Superior Court Appellate Division**

35
36 **Chapter 1. General Rules Applicable to Appellate Division Proceedings**

37
38 **Rule 8.804. Definitions**

39
40 As used in this division, unless the context or subject matter otherwise requires:

41
42 (1)–(19) * * *

1 ~~(20) “Recycled” as applied to paper means “recycled printing and writing paper”~~
2 ~~as defined by Public Contract Code section 12209.~~

3
4 (21-20) “Trial court” means the superior court from which an appeal is taken.

5
6 (22-21) “Reviewing court” means the appellate division of the superior court.

7
8 (23-22) “Judgment” includes any judgment or order that may be appealed.
9

10
11 **Chapter 2. Appeals and Records in Limited Civil Cases**

12
13 **Article 2. Record in Civil Appeals**

14
15
16 **Rule 8.838. Form of the record**

17
18 **(a) Paper and format**

19
20 Except as otherwise provided in this rule, clerk’s and reporter’s transcripts must
21 comply with the paper and format requirements of rule 8.144(a).
22

23 **(b) Indexes * * ***

24
25 **(c) Binding and cover**

26
27 (1) * * *

28
29 (2) Each volume’s cover, ~~preferably of recycled stock,~~ must state the title and
30 trial court number of the case, the names of the trial court and each
31 participating trial judge, the names and addresses of appellate counsel for
32 each party, the volume number, and the inclusive page numbers of that
33 volume.
34

35 (3) * * *

36
37
38 **Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor**
39 **Appeals**

40
41 **Rule 8.883. Contents and form of briefs**
42

1 (a)–(b) * * *

2
3 (c) **Form**

4
5 (1) A brief may be reproduced by any process that produces a clear, black image
6 of letter quality. The paper must be white or unbleached, recycled, 8 1/2 by 11
7 inches, and of at least 20-pound weight. Both sides of the paper may be used
8 if the brief is not bound at the top.

9
10 (2)–(11) * * *

11
12 (d) * * *

13
14
15 **Chapter 5. Appeals in Infraction Cases**

16
17 **Article 3. Briefs, Hearing, and Decision in Infraction Appeals**

18
19 **Rule 8.928. Contents and form of briefs**

20
21 (a)–(b) * * *

22
23 (c) **Form**

24
25 (1) A brief may be reproduced by any process that produces a clear, black image
26 of letter quality. The paper must be white or unbleached, recycled, 8 1/2 by 11
27 inches, and of at least 20-pound weight. Both sides of the paper may be used
28 if the brief is not bound at the top.

29
30 (2)–(11) * * *

31
32 (d) * * *

33
34
35 **Title 10. Judicial Administration Rules**

36
37 **Division 3. Judicial Administration Rules Applicable to All Courts**

38
39 **Rule 10.503. Use of recycled paper by all courts**

40
41 ~~All courts must use recycled paper for all purposes except for uses for which recycled~~
42 ~~paper is not practically available.~~

SPR13-13

Court Administration: Repeal Rules Mandating Use of Recycled Paper (Repeal Cal. Rules of Court, rules 1.22, 2.101, 2.131, and 10.503 and amend rules 1.6, 3.1368, 8.144, 8.204, 8.804, 8.838, 8.883, 8.928, and 10.614)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committees' Response
1.	Adam Jaffe Law Office of Adam Jay Jaffe San Diego	A	No further comment.	The committees note the commentator's agreement with the proposal; no further response is required.
2.	California Judges Association By: Lexi Howard Legislative Director	A	<p>The proposal indicates: This proposal would eliminate all California Rules of Court mandating use of recycled paper—those rules addressed to courts as well as those addressed to parties. The statutory mandate that courts ensure at least 50 percent of reportable purchases, including paper products, are recycled products would remain in effect. This proposal was originally recommended by the Court Executives Advisory Committee, at the request of the Superior Court of Orange County, as one of the suggestions that the committee submitted to the Rules and Project Committee of the Judicial Council to achieve cost savings and efficiencies.</p> <p>The California Judges Association supports the proposed rule, as specified in Invitation to Comment SPR 13-13, because the current rules require more than the state mandate, resulting in higher costs to the courts. In light of the dire fiscal circumstances of our courts, cost reduction measures such as this are appropriate.</p>	The committees note the commentator's agreement with the proposal; no further response is required.
3.	Fred Garcia Assurance Detective Agency Joshua Tree, California	AM	The use of recycled paper should remain in effect for public officials and practicing attorneys as a matter of sound public policy;	The committees considered leaving in place the rules requiring parties to file and serve on recycled paper, but concluded that the rules

SPR13-13

Court Administration: Repeal Rules Mandating Use of Recycled Paper (Repeal Cal. Rules of Court, rules 1.22, 2.101, 2.131, and 10.503 and amend rules 1.6, 3.1368, 8.144, 8.204, 8.804, 8.838, 8.883, 8.928, and 10.614)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committees' Response
			however, it should be encouraged but not mandatory for pro se litigants to promote access to justice.	regarding use of recycled paper should be the same for both courts and parties. The difficulty in enforcing the rules, and the complexity of requiring parties to file forms on recycled paper even while courts were not providing the forms on recycled paper, were also considerations.
4.	Orange County Bar Association By: Wayne Gross President	AM	This proposal reasonably achieves its stated purpose of eliminating additional costs to the courts of using recycled paper versus other forms of paper, but it needs to clarify the court's own statutory requirements in these regards. This proposal has only a slight positive impact on the public's access to the courts by making it less costly to use the court system by all persons. The proposal should be modified to include references in Rules 1.6, 8.144, 8.804, 8.838, 10.503, 10.614, et al. to the court's statutory requirements to purchase "at least 50% of reportable purchases" from recycled materials. See Cal. Public Contract Code §§ 12200, 12201, 12203, 12207, 12209. A total elimination of the requirement to use recycled paper etc. is a misstatement of the law now applicable to the courts and will engender serious complaints from the statutory proponents. Statutory references are also necessary because these Rules of Court primarily address the use of recycled paper while the statutes themselves are applicable to other recycled materials as well, all as specified	The committees note the commentator's general agreement with the proposal. The committees disagree that the rules should include reference to statutory requirements, and notes that the requirement imposed on the court is set out clearly in the Judicial Branch Contracting Manual, ch. 3, §3.3(A), "Utilizing Recycled Content Products," which not only describes the statutory requirement for purchasing from recycled sources, but expressly includes paper purchases in its description.

SPR13-13

Court Administration: Repeal Rules Mandating Use of Recycled Paper (Repeal Cal. Rules of Court, rules 1.22, 2.101, 2.131, and 10.503 and amend rules 1.6, 3.1368, 8.144, 8.204, 8.804, 8.838, 8.883, 8.928, and 10.614)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committees' Response
			at Cal. Public Contract Code § 12207.	
5.	State Bar of California Committee on Administration of Justice By: Saul Bercovitch	A	CAJ supports repeal of the mandate to use recycled paper, but believes the use of recycled paper should still be encouraged, by rule or otherwise.	The Civil and Small Claims Advisory Committee acknowledges the value of supporting use of recycled paper, but disagrees that a rule is the place state such a policy, particularly when all rules currently implementing the policy are being repealed. The Appellate Advisory Committee, however, agrees with the commentator and that committee may consider proposing that a rule to encourage additional use of recycled paper by the courts be circulated for public comment in the future.
6.	Superior Court of San Diego County By: Mike Roddy Executive Officer	A	No further comment.	The committees note the commentator's agreement with the proposal; no further response is required.
7.	Superior Court of California, County of Los Angeles	A	No further comment.	The committees note the commentator's agreement with the proposal; no further response is required.

3.3 STATE AGENCY BUY RECYCLED CAMPAIGN (SABRC) PROGRAM

The SABRC is a joint effort between the California Department of Resources Recycling and Recovery (CalRecycle) and DGS to implement state law requiring state agencies and the Legislature to purchase recycled-content products (RCPs). It complements the efforts of the Integrated Waste Management Act (Pub. Resources Code, § 4000 et seq.), which was enacted to reduce the amount of waste going to California's landfills.

A. Utilizing Recycled Content Products

PCC 12203 requires JBEs to ensure that at least 50 percent of reportable purchases are recycled products. This requirement applies to purchases in each of the targeted categories identified in PCC 12207, which includes categories covering paper products, office supplies, office products, and a wide range of other products. The required postconsumer recycled content varies by category (e.g., recycled paper products must consist of at least 30 percent postconsumer fiber).

Example: A JBE is purchasing \$20,000 worth of paper for its copy machines. At least \$10,000 of the paper must have 30 percent recycled content by weight. The other \$10,000 may be any mix of recycled or nonrecycled products. For additional information, search on CalRecycle or www.calrecycle.ca.gov.

Note: CRC 10.503, adopted by the Judicial Council effective January 1, 1994, states: "All courts must use recycled paper for all purposes except for uses for which recycled paper is not practically available."

B. Recycled Preference and Competitive Solicitations

To the maximum extent economically feasible in performance of the contract work, each JBE must require Vendors to use recycled content products (PCC 12203(d)). Contact Resources Recycling and Recovery (CalRecycle) at 916-341-6199 or 916-341-6524 or SABRC@CalRecycle.ca.gov for information on qualifying SABRC reusable and recycled content products.

C. Supplier Certification

Unless otherwise waived as noted below, JBEs must require all Vendors to certify in writing, under penalty of perjury, the percentage of recycled content in the products, materials, goods, or supplies offered or sold to the JBE (PCC 12205). This requirement applies even if the product contains no recycled material. To access the Postconsumer-Content Certification form (CIWMB 74), search on CalRecycle or www.calrecycle.ca.gov/buyrecycled/stateagency/Forms/CIWMB74.doc.

This certification can be waived if the postconsumer recycled content can be verified by other written means such as product label, packaging, catalog, manufacturer/Vendor website, product advertisement. For additional information regarding the SABRC program, search on CalRecycle or www.calrecycle.ca.gov/BuyRecycled/StateAgency/.

D. Printer Cartridges

No JBE may purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person (PCC 12156). Each JBE must print a statement on the cover of its printer or duplicator cartridge, or in some other noticeable place in the Solicitation Document, notifying Prospective Bidders that it is unlawful to prohibit a printer or duplication cartridge that is sold to the state from being recycled or remanufactured, except as specified in PCC 12156(b).