



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 25, 2014

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Title	Agenda Item Type
Juvenile Law: Remote Filing	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 5.522	January 1, 2015
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	March 21, 2014
Hon. Kimberly J. Nystrom-Geist, Cochair	Contact
Hon. Jerilyn L. Borack, Cochair	Audrey Fancy, 415-865-7706 <a href="mailto:audrey.fancy@jud.ca.gov">audrey.fancy@jud.ca.gov</a>
	Melissa Ardaiz

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### Executive Summary

The Family and Juvenile Law Advisory Committee recommends amending rule 5.522 of the California Rules of Court to (1) allow for the electronic filing of documents in juvenile dependency and delinquency court proceedings, consistent with rule 2.252 et seq. and section 1010.6 of the Code of Civil Procedure, and (2) clarify and update the fax filing portions of the rule. The committee also recommends a delayed effective date of January 1, 2015, to allow courts time to develop or revise local rules. The Trial Court Presiding Judges and the Court Executives Advisory Committees suggested allowing for the electronic filing of documents in juvenile court proceedings as a means of improving court efficiency, achieving costs savings, and incorporating modern technology.

### Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Amend the title of rule 5.522 from “Fax filing” to “Remote filing,” and include provisions throughout the amended rule that apply to both fax and electronic filing in juvenile court proceedings;
2. Amend subdivision (a)(2) to update the fax filing terminology and to clarify that a modern fax machine may include an electronic device capable of receiving a fax transmission, as defined in rule 2.301;
3. Add a new subdivision (b)(1), “Electronic filing,” to clarify that documents may be electronically filed in juvenile dependency and delinquency court proceedings, as provided under and consistent with rule 2.252 et seq.;
4. Add a new subdivision (b)(2) to provide for local procedures governing direct electronic filing or indirect filing through an electronic filing service provider;
5. Add a new subdivision (b)(3) to ensure that electronic filing must be conducted in a manner that preserves and ensures the confidentiality of records;
6. Add a new subdivision (b)(4) to clarify that this rule does not incorporate the electronic service provisions in rule 2.251;
7. Amend the rule generally to allow fax filing and electronic filing by “local rule” only but in (c)(3) retain the ability of local courts to disseminate the fax number and business hours during which fax file will be accepted by other written instruction;
8. Amend current subdivision (g)(1)–(2) (new subdivision (c)(6)(A)) to allow for greater flexibility in the protocol for securing the confidentiality of the documents subject to fax filing; and
9. Incorporate structural and technical amendments to the fax portions of the rule.

The text of amended rule 5.522 is attached at pages 8–10.

### **Previous Council Action**

The Judicial Council adopted rule 5.522 as rule 1406.5, effective January 1, 1999. No substantive changes have been made to the rule since that time.

### **Rationale for Recommendation**

In recent years the courts have worked to develop efficiencies that also help facilitate access to justice. Many courts have incorporated electronic filing and other technological changes to achieve this purpose.

## **Legal framework**

The trial court rules were recently amended in response to the enactment of Assembly Bill 2073 (Silva; Stats. 2012, ch. 320),<sup>1</sup> which required the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service of documents in “specified civil actions” on or before July 1, 2014. Effective July 1, 2013, the trial court rules provide a uniform framework for allowing mandatory and/or permissive electronic filing in civil cases.

With respect to permissive electronic filing, rule 2.253(a) states that “[a] court may permit parties by local rule to file documents electronically in any types of cases . . . subject to the conditions in Code of Civil Procedure section 1010.6 and the rules in this chapter.”

With respect to mandatory electronic filing, rule 2.253(b) states that “[a] court may require parties by local rule to electronically file documents in civil actions . . . subject to the conditions in Code of Civil Procedure section 1010.6, the rules in this chapter, and [the conditions listed in rule 2.253(b)(1)].”

The Judicial Council authorized the broadest range of civil cases for mandatory electronic filing, subject to individual court discretion. As stated in the Advisory Committee Comment on rule 2.253(b)(1):

This subdivision allows courts to institute mandatory electronic filing and service in any type of civil case for which the court determines that mandatory electronic filing is appropriate. The scope of this authorization is meant to be broad. It will enable courts to implement mandatory electronic filing in a flexible yet expansive manner. However, in initiating mandatory electronic filing, courts should take into account the fact that some civil case types may be easier and more cost-effective to implement at the outset while other types may require special procedures or other considerations (such as the need to preserve the confidentiality of filed records) that may make them less appropriate for inclusion in initial mandatory e-filing efforts.

Therefore, each court may implement electronic filing in a practical, incremental way depending on the needs and resources of the courts and the public they serve.

## **Applicability in juvenile court proceedings**

Specific authorization for the electronic filing of documents in juvenile dependency and delinquency court proceedings is consistent with Code of Civil Procedure section 1010.6 and the

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<sup>1</sup> The Judicial Council amended rules 2.250–2.254, 2.256, 2.258, and 2.259 of Title 2, Trial Court Rules, effective July 1, 2013. The Judicial Council report for this proposal, titled *Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service in Civil Cases*, is available at [www.courts.ca.gov/documents/jc-20130628-itemC.pdf](http://www.courts.ca.gov/documents/jc-20130628-itemC.pdf). The proposed amendments were approved by the council at its meeting on June 28, 2013.

recently amended statewide trial court rules. Rule 2.2 states that “[t]he Trial Court Rules apply to all cases in the superior courts unless otherwise specified by a rule or statute.” These trial court rules now allow a superior court to determine whether and how to institute mandatory electronic filing and service in civil cases, subject to the conditions in Code of Civil Procedure section 1010.6, statewide rules, and various conditions. (See rule 2.253(b).) In addition, a court may allow parties to voluntarily file documents electronically not only in civil cases but “in any types of cases.” (See rule 2.253(a).)

While the Advisory Committee Comment concerning rule 2.253(b)(1) provides guidance to courts in determining which types and categories of civil cases may be appropriate for authorizing mandatory electronic filing, it does not provide clear guidance for juvenile courts. The Family and Juvenile Law Advisory Committee believes that clarifying the applicability of the statewide rules to electronic filing in juvenile dependency and delinquency court proceedings would be helpful. The proposal amends the current fax filing rule to include provisions that apply to both fax and electronic filing in juvenile court proceedings and would change the title to broadly encompass remote filing. The rule also updates fax filing terminology and provide for fax filing by local rule only. It would also add specific direction to courts for the creation of local rules to aid with preservation of the confidentiality of records. This proposal relates to electronic filing only; it does not include or incorporate provisions relating to electronic service.

### **Comments, Alternatives Considered, and Policy Implications**

The proposal was circulated during the regular winter comment cycle from December 13, 2013 to January 24, 2014, to the standard mailing lists for family and juvenile law proposals. Included on the lists were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other juvenile law professionals and justice partners. The proposal was also reviewed by the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee (TCPJAC/CEAC) Joint Rules Working Group. Seven individuals or organizations provided comment; four agreed with the proposal, two agreed if modified, and one did not state a position. No commentators disagreed with the proposal. A chart presenting the comments and the committee’s responses is attached at pages 11–26.

The committee sought specific comment on a number of issues, with the following four issues receiving the most comment and prompting changes to the proposal:

- Confidentiality standards
- Electronic filing service providers (EFSPs)
- Fax filing
- Implementation date

In addition, commentators suggested a number of minor grammatical changes that have been incorporated into the amended rule.

### **Confidentiality standards**

Due to the confidential nature of juvenile proceedings, the Family and Juvenile Law Advisory Committee sought specific comment on whether the juvenile rule should include more-specific language on the confidentiality of records; the language circulated for comment in proposed rule 5.522(b)(3) was: “Electronic filing must be provided in a manner that preserves the confidentiality of records.” The TCPJAC/CEAC Joint Rules Working Group commented that the circulated language was sufficient to protect confidentiality and that “the proposal is consistent with the Branch’s overall direction with respect to e-filing.” However, other commentators such as the Riverside County Probation Department, FLEXCOM, and the Superior Court of San Diego County expressed concern that the circulated language was not sufficient and further, that California Rules of Court, rules 2.252–2.261 mention confidentiality.

In response to the totality of the comments the committee proposes the following revised language: “Electronic filing must be conducted in a manner that preserves and ensures the confidentiality of records by encryption or other secure methods.”

The committee also requests that the Court Technology Advisory Committee consider amending rules 2.252–2.261 to ensure the confidentiality of juvenile files.

### **Electronic filing service providers (EFSPs)**

Given confidentiality concerns, the committee also sought comment on whether there should be further minimum requirements for EFSPs identified in dependency and delinquency proceedings and whether it is necessary to exclude EFSPs from juvenile proceedings unless certain minimum confidentiality standards can be met. Two commentators, the Riverside County Probation Department and the Superior Court of San Diego County submitted specific comment on this issue in support of further standards, with the San Diego court suggesting this issue be deferred to local courts for further specificity. In response to these comments the committee proposes a new (b)(2): “A court may allow for the electronic filing of documents directly with the court or may provide by local rule for indirect filing through an electronic filing service provider that has in place systems to ensure the integrity and confidentiality of transmission of records and adheres to the requirements of rule 2.256(a)(1).”

In addition, the committee believes that technological issues are more appropriately addressed in branchwide standards or guidelines than in the rules of court. The committee requests that the Court Technology Advisory Committee, the Court Records Management Working Group, and other branch entities with technological expertise consider developing standards to preserve confidentiality that would be available to courts and technology providers.

### **Fax filing**

Rather than drafting a new rule on electronic filing, the committee elected to amend the fax filing rule that has been in effect since 1999 and circulated a number of minor changes to update this portion of the rule. Two commentators provided comment on this portion of the proposal, with neither requiring substantive changes. The Riverside County Probation Department

recommended continuance of a sole dedicated fax machine and the TCPJAC/CEAC Joint Rules Working Group supports allowing courts to permit fax filing by local rule. The proposed rule continues to leave to local discretion procedures for fax filing and provides for the preservation of confidential documents by either separate fax machine or protocol. Rule 2.256(a)(1) provides that each filer must “[c]omply with any court requirements designed to ensure the integrity of electronic filing and to protect sensitive personal information.”

### **Implementation date**

The committee circulated this proposal in the winter cycle with the intention of recommending a July 1, 2014 effective date. The committee did invite comment on whether two months from the Judicial Council meeting was a sufficient amount of time to implement the rule. The Superior Court of San Diego County commented that this would not allow time for the court to develop and implement a local rule. The committee agrees that this time is insufficient to allow courts to develop local rules and recommends a delayed effective date of January 1, 2015. This would provide courts with eight months following the council meeting to develop local rules.

### **Alternatives considered**

The Family and Juvenile Law Advisory Committee considered taking no action to amend rule 5.522. The substantive content related to electronic filing is already included in the statewide trial court rules. However, the committee believes that it is important to include a provision in rule 5.522 to clarify that these rules apply to juvenile dependency and delinquency court proceedings, subject to individual court discretion.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposal will have an impact on court operations and costs if a court decides to implement the electronic filing framework in juvenile dependency and delinquency court proceedings. Implementation is subject to court discretion and local court rule. The TCPJAC/CEAC Joint Rules Working Group provided input on the implementation costs and requirements of this rule and noted that if courts decide to implement electronic filing, there would be costs associated with the development and implementation of the electronic filing solution, communication to stakeholders, and staff training. Further, if courts decide to implement electronic filing, changes will need to be made to the case management systems to support electronic filing, and security measures will need to be taken to ensure confidentiality in the transmission of documents. Local rules will need to be created to implement electronic filing and to define documents that can be electronically transmitted, if courts decide to allow electronic filing of documents other than petitions as outlined in section (c)(1). If courts decide to implement, training will be needed for court staff. Finally, if courts decide to implement electronic filing, they will need to work closely with justice partners to develop and implement an electronic filing solution. Depending on the documents the courts decide to allow to be filed electronically, there may be an impact to court users that may also require outreach.

## Attachments and Links

1. Cal. Rules of Court, rule 5.522, at pages 8–10
2. Comment chart at pages 11–26
3. Rule 2.252: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_252](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_252)
4. Rule 2.253: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_253](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_253)
5. Rule 2.254: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_254](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_254)
6. Rule 2.255: [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)
7. Rule 2.256: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_256](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_256)
8. Rule 2.257: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_257](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_257)
9. Rule 2.258: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_258](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_258)
10. Rule 2.259: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_259](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_259)
11. Rule 2.261: [www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2\\_261](http://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_261)

Rule 5.522 of the California Rules of Court is amended, effective January 1, 2015, to read:

1 **Rule 5.522. ~~Fax~~Remote filing**

2  
3 **(a) Applicability and definitions**

4  
5 (1) This rule applies to juvenile court proceedings in courts that permit fax or  
6 electronic filing by local rule ~~or other written instruction~~.

7  
8 (2) As used in this rule, “fax,” “faecsimile transmission” or “fax transmission,”  
9 “faecsimile machine” or “fax machine,” “faecsimile filing” or and “fax filing”  
10 and “fax” are defined in rule 2.301. A fax machine also includes any  
11 electronic device capable of receiving a fax transmission, as defined in rule  
12 2.301.

13  
14 (3) As used in this rule, “electronic filing” is defined in rule 2.250. Rule 2.250  
15 also defines other terms used in this rule related to electronic filing, such as  
16 “document,” “electronic filer,” “electronic filing service provider,” “regular  
17 filing hours,” and “close of business.”

18  
19 **(b) Electronic filing**

20  
21 (1) A court may allow for the electronic filing of documents in juvenile  
22 dependency and delinquency proceedings as provided under, and consistent  
23 with, rule 2.252 et seq.

24  
25 (2) A court may allow for the electronic filing of documents directly with the  
26 court or may provide by local rule for indirect filing through an electronic  
27 filing service provider that has in place systems to ensure the integrity and  
28 confidentiality of transmission of records and adheres to the requirements of  
29 rule 2.256(a)(1).

30  
31 (3) Electronic filing must be conducted in a manner that preserves and ensures  
32 the confidentiality of records by encryption or other secure methods.

33  
34 (4) This rule does not incorporate the electronic service provisions in rule 2.251.

35  
36 **~~(b) — Juvenile court documents that may be filed by fax~~**

37  
38 **(c) Fax filing**

1           (1) Juvenile court documents that may be filed by fax

2  
3           The following documents may be filed in juvenile court by the use of a fax  
4           machine: petitions filed under sections 300, ~~342, 387, 388,~~ 601, 602, ~~342,~~  
5           ~~387, 388, 777,~~ and 778. Other documents may be filed by the use of a fax  
6           machine if permitted by local rule ~~or other written instruction~~ as specified in  
7           (a).

8  
9           ~~(e) — Persons and agencies that may file by fax~~

10  
11           (2) Persons and agencies that may file by fax

12  
13           Only the following persons and agencies may file documents by the use of a  
14           fax machine, as stated in (b)(c)(1): any named party to the proceeding; any  
15           attorney of record in the proceeding; the county welfare department; the  
16           probation department; the office of the district attorney; the office of the  
17           county counsel; a CASA volunteer appointed in the case.

18  
19           (A) Any named party to the proceeding;

20  
21           (B) Any attorney of record in the proceeding;

22  
23           (C) The county child welfare department;

24  
25           (D) The probation department;

26  
27           (E) The office of the district attorney;

28  
29           (F) The office of the county counsel; and

30  
31           (G) A Court Appointed Special Advocate (CASA) volunteer appointed in  
32           the case.

33  
34           ~~(d) — Procedures for fax filing~~

35  
36           (3) Procedures for fax filing

37  
38           A ~~party or agency person~~ described in (c)(2) may file by fax directly to any  
39           juvenile court that has provided for fax filing by local rule ~~or other written~~  
40           ~~instruction.~~ The local rule or ~~other~~ written instruction must provide the fax  
41           telephone number or numbers for filings and the business hours during which  
42           fax filings will be accepted.

1 ~~(e)~~ **Mandatory cover sheet**

2  
3 (4) Mandatory cover sheet

4  
5 A fax filing must be accompanied by *Fax Filing Cover Sheet* (form JV-520).  
6 The cover sheet must be the first page of the transferred document. The court  
7 is not required to retain or file a copy of the cover sheet.  
8

9 ~~(f)~~ **Signatures**

10  
11 (5) Signatures

12  
13 Notwithstanding any provision of law to the contrary, a signature produced  
14 by fax transmission is an original signature.  
15

16 ~~(g)~~ **Confidentiality requirements**

17  
18 (6) Confidentiality requirements

19  
20 ~~In order to~~ To secure the confidentiality of the documents subject to filing by  
21 fax, the following procedures are required:  
22

23 ~~(1)(A)~~ The In each clerk's office designated to receive such documents;  
24 must have either a separate fax machine must be provided and  
25 dedicated solely to the receipt of the documents described in ~~(b)~~(c)(1)  
26 or a fax machine that is set up with a protocol to preserve the  
27 confidentiality of the documents described in (c)(1); and  
28

29 ~~(2)~~ The telephone number to be used for these filings must be made  
30 available only to those persons and agencies described in (c); and  
31

32 ~~(3)(B)~~ Any document received for fax filing must be filed or submitted  
33 to the court immediately on receipt and must not be placed or stored  
34 where anyone not entitled to access may examine it.  
35

**W14-11****Juvenile Law: Electronic Filing** (amend Cal. Rules of Court, rule 5.522)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	John Mauro Div. Mgr., Child Welfare Services Tulare County Health and Human Services	A	This rule change is strongly supported.	No response required.
2.	Orange County Bar Association	A	Social Security Administration (SSA) has been successfully electronically filing petitions and certain documents with the Orange County Juvenile Court for close to five years under a pilot program. SSA uses the Juvenile Court's secure portal for electronic filing. The proposed revised rule 5.522 on electronic filing simply incorporates current practices in general terms.	No response required.
3.	Riverside County Probation Department Allison Paterson Executive Secretary	N/I	<p><b>Department Response:</b> It seems that fax filing will remain unchanged and the terms for electronic filing will now be defined in separate rules of court. Specifically, CRC 2.250 – 2.259 defines, authorizes and provides guidance for electronic filing (as opposed to fax filing). Of note, CRC 2.255 allows the court to contract with third party “electronic filing service providers” who will furnish and maintain an electronic filing system for the court. In such a case, reports would be submitted to the provider, who would then send it to the court.</p> <p>The request for comment had several specific questions relating to the proposed changes. They are:</p> <p>Question: Does the proposal appropriately address the stated purpose?</p>	No response required.

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**Juvenile Law: Electronic Filing** (amend Cal. Rules of Court, rule 5.522)

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	Commentator	Position	Comment	Committee Response
			<p>Answer: Yes.</p> <p>Question: Scope: Are there any electronic filing provisions in rule 2.252 et seq. that pose concern if applied in juvenile dependency and/or delinquency court proceedings?</p> <p>Answer: No.</p> <p>Question: If so, which provisions (for electronic filing service providers, see below)? Should these provisions be specifically excluded from applying in the context of juvenile court proceedings?</p> <p>Answer: None and no.</p> <p>Confidentiality: Proposed subdivision (b)(3) states that “[e]lectronic filing must be provided in a manner that preserves the confidentiality of records.”</p> <p>Question: Is this language sufficient to address protection of confidentiality for juvenile court documents that are electronically filed?</p> <p>Answer: No. (see below)</p> <p>Question: Should the rule specifically refer to the need to have juvenile records that are transmitted electronically encrypted or sent by some other secure method?</p> <p>Answer: Yes.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>Committee will revise language to read:  <u>“Electronic filing must be conducted in a manner that preserves and ensures the confidentiality of records by encryption or other secure methods.”</u></p> <p>See above.</p>

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	Commentator	Position	Comment	Committee Response
			<p>Question: Are there other non-technological issues relating to the preservation of confidentiality of juvenile records transmitted electronically that need to be addressed in the rule?</p> <p>Answer: No.</p> <p>Electronic filing service providers: The trial court rules allow for direct and indirect electronic filing. Rule 2.252(b) states that “a court may provide for the electronic filing of documents directly with the court, indirectly through one or more approved electronic filing service providers, or through a combination of direct and indirect means.” Rule 2.255 governs contracts with electronic filing service providers. Electronic filing service providers bring a third party into the process. As currently proposed, rule 5.522 would incorporate these provisions as applicable in juvenile dependency and delinquency court proceedings.</p> <p>Question: Do you have any concerns with this approach?</p> <p>Answer: No, under the condition of confidentiality via encryption of documents or other secure measures taken.</p> <p>Question: Should rule 5.522 include language to clarify the use of electronic filing service providers in juvenile court proceedings and</p>	<p>No response required.</p> <p>No response required.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>address preservation of confidentiality?</p> <p>Answer: Yes.</p> <p>Question: Should rule 5.522 specifically exclude the provisions related to electronic filing service providers from applying in juvenile court proceedings?</p> <p>Answer: No, as they are already approved for civil proceedings which include confidential juvenile information; i.e., Step-parent adoptions and Abandonments.</p> <p>Fax filing</p> <p>“Written instruction”: Current rule 5.522(a) allows a court to permit fax filing “by local rule or other written instruction.” To be consistent with the trial court rules, this proposal eliminates the “written instruction” option and limits both fax and electronic filing to “local rule.”</p> <p>Question: How would this proposed change affect your court?</p> <p>Answer: Unsure.</p> <p>Question: Has your court permitted fax filing by “written instruction”?</p> <p>Answer: Unsure.</p>	<p>In response to the totality of comments received, the committee will add a new subdivision (2): <u>“A court may allow for the electronic filing of documents directly with the court or may provide by local rule for the indirect filing through an electronic filing service provider that has in place systems to ensure the integrity and confidentiality of transmission of records and adheres to the requirements of rule 2.256(a)(1).”</u></p> <p>No response required.</p> <p>No response required.</p>

**W14-11****Juvenile Law: Electronic Filing** (amend Cal. Rules of Court, rule 5.522)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Question: Are you in favor of limiting fax filing to local rule or do you think that rule 5.522 should continue to allow courts to permit fax filing by either “local rule or other written instruction?”</p> <p>Answer: No opinion.</p> <p>Question: Has your court permitted fax filing by “written instruction”?</p> <p>Answer: Unknown.</p> <p>Separate fax machine/confidentiality: To secure the confidentiality of documents filed by fax, current rule 5.522 requires the clerk’s office to have a separate fax machine dedicated solely to the receipt of juvenile court documents that may be filed by fax.</p> <p>This is an ongoing cost. Proposed subdivision (c)(6)(A) includes revised language aimed at providing flexibility by expanding this subdivision to include a fax machine that is set up with a protocol to preserve confidentiality.</p> <p>Question: Do you have any concerns about or objections to this approach?</p> <p>Answer: We would prefer the continuance of a sole dedicated fax machine.</p> <p>General: Rule 5.522 (Fax filing) was adopted by the Judicial Council, effective January 1, 1999.</p>	<p>No response required.</p> <p>No response required.</p> <p>The proposed revised language would allow for either the use of a dedicated, separate fax machine or a fax machine that is set up with a protocol to preserve confidentiality. It is up to local court discretion to determine the best approach. The</p>

**W14-11**

**Juvenile Law: Electronic Filing** (amend Cal. Rules of Court, rule 5.522)

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	Commentator	Position	Comment	Committee Response
			<p>No substantive changes have been made to this rule since that time.</p> <p>Question: Do you have any concerns or suggested changes regarding the current fax provisions?</p> <p>Answer: No.</p>	<p>committee believes that this approach protects the confidentiality of documents while allowing flexibility.</p> <p>No response required.</p>
4.	<p>State Bar of California, Family Law Section Saul Bercovitch FLEXCOM, Legislative Counsel</p>	AM	<p>The Invitation to Comment asks some specific questions, two of which are relevant to FLEXCOM. The questions and responses are as follows:</p> <ul style="list-style-type: none"> <li>• <i>Is the language [“...electronic filing must be provided in a manner that preserves the confidentiality of records”] sufficient to address protection of confidentiality for juvenile court documents that are electronically filed?</i></li> </ul> <p>Without more information about the fail-safe nature of the process itself, it is difficult to evaluate whether the language is sufficient to address protection of confidentiality. The sufficiency of the protection will ultimately need to be tested by the creation and use of the systems intended to be put into place. FLEXCOM does, however, suggest one amendment to the proposed language to further the goal of confidentiality. FLEXCOM recommends that the language in proposed subdivision (b)(3) be amended to read: “[e]lectronic filing must be provided in a manner that preserves <u>and ensures</u> the</p>	<p>Committee will revise language to read: <u>“Electronic filing must be conducted in a manner that preserves and ensures the confidentiality of records by encryption or other secure methods.”</u></p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>confidentiality of records.”</p> <p>• <i>Are there other nontechnological issues relating to the preservation of confidentiality of juvenile records transmitted electronically that need to be addressed in the rule?</i></p> <p>As with the comment above, FLEXCOM has some practical and operational questions that may go beyond the language in the rule itself. For example, to what extent does the use of electronic filing create concerns about access by unauthorized persons, agencies or institutions to such records? How will access be properly controlled and limited?</p>	See response above.
5.	Superior Court of Los Angeles County	A	No specific comment.	No response required.
6.	Superior Court of San Diego County Michael M. Roddy Executive Officer	AM	<p>Does the proposal appropriately address the stated purpose? <i>Yes, but changes need to be made.</i></p> <p><i>Scope:</i> Are there any electronic filing provisions in rule 2.252 et seq. that pose concern if applied in juvenile dependency and/or delinquency court proceedings? <i>Yes.</i></p>	<p>See committee responses to requested changes below.</p> <p>Based on totality of comments, the committee will propose the following (b)(3): “<u>Electronic filing must be conducted in a manner that preserves and ensures the confidentiality of records by encryption or other secure methods.</u>” And (b)(2): “<u>A court may allow for the electronic filing of documents directly with the court or may provide by local rule for the indirect filing through an electronic filing service provider that has in place systems to ensure the integrity and confidentiality of transmission of records and adheres to the requirements of rule 2.256(a)(1).</u>”</p>

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**Juvenile Law: Electronic Filing** (amend Cal. Rules of Court, rule 5.522)

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	Commentator	Position	Comment	Committee Response
			<p>If so, which provisions ...? <i>Confidentiality of juvenile documents is crucial, and confidentiality of electronic information is complicated. The proposed revision to 5.522(b)(3) is not enough. While the rules should not have too much detail about information technology (which is always changing), there should be some minimum requirements. There should also be some mention of confidentiality in Rules 2.252-2.261 and a reference to Rule 5.522.</i></p> <p><i>CRC Rules 2.252(b), 2.253(a) &amp; (b), allowing electronic filing via electronic service providers. (See also CRC rule 2.255.) Electronic filing for dependency and delinquency cases should be <u>direct</u> filing with the court <b>when possible</b> to provide greater protection of confidentiality and reduce the likelihood of errors in, or failure of, transmission. Of course, this should be a matter left to each court's discretion, with specifics enunciated in a local rule. The Rules of Court should provide the minimum requirements that must be met to allow electronic filing through a third party vendor.</i></p>	<p>See response above. Revisions to rules 2.252–2.261 are beyond the scope of this proposal; however, the committee believes that technological issues are more appropriately addressed in branchwide standards or guidelines than in the rules of court. The committee will request that the Court Technology Advisory Committee, the Court Records Management Working Group, and other branch entities with technological expertise consider developing standards to preserve confidentiality that would be available to courts and technology providers.</p> <p>The committee recommends addition language regarding electronic filing service providers as discussed above.</p>

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	Commentator	Position	Comment	Committee Response
			<p>Should these provisions be specifically excluded from applying in the context of juvenile court proceedings? <i>Yes, unless certain minimum security standards can be met.</i></p> <p>Is this language sufficient to address protection of confidentiality for juvenile court documents that are electronically filed? <i>It seems rather vague, perhaps intentionally so. It would be prudent to add language regarding the possible penalties for breaching confidentiality (e.g., WIC § 827(b)(2), last par.) and to establish certain minimum confidentiality standards that must be met in order to allow electronic filing.</i></p> <p>Should the rule specifically refer to the need to have juvenile records that are transmitted electronically encrypted or sent by some other secure method? <i>Yes.</i></p> <p><i>Electronic filing service providers:</i> As currently proposed, rule 5.522 would incorporate rules 2.252(b) and 2.255 as applicable in juvenile dependency and delinquency court proceedings. Do you have any concerns with this approach? <i>Yes (see above).</i></p> <p>Should rule 5.522 include language to clarify the use of electronic filing service providers in</p>	<p>See response above.</p> <p>See response above. The committee will add language to require that juvenile records that are transmitted electronically must be encrypted or sent by some other secure method.</p> <p>In response to the totality of comments received, the committee will add a new subdivision (2): “<u>A court may allow for the electronic filing of documents directly with the court or may provide by local rule for the indirect filing through an electronic filing service provider that has in place systems to ensure the integrity and confidentiality of transmission of records and adheres to the requirements of rule 2.256(a)(1).</u>”</p> <p>See response above.</p> <p>See response above.</p>

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	Commentator	Position	Comment	Committee Response
			<p>juvenile court proceedings and address preservation of confidentiality? <i>Yes, this must be done.</i></p> <p>Should rule 5.522 specifically exclude the provisions related to electronic filing service providers from applying in juvenile court proceedings? <i>Yes, unless they can meet certain minimum standards regarding confidentiality of documents.</i></p> <p>“Written instruction”: Current rule 5.522(a) allows a court to permit fax filing “by local rule or other written instruction.” ...this proposal eliminates the “written instruction” option and limits both fax and electronic filing to “local rule.” How would this proposed change affect your court? <i>It would have no effect because we already have a local rule: San Diego Superior Court Rules, rule 6.1.20.</i></p> <p>Has your court permitted fax filing by “written instruction”? <i>In the past, yes (prior to the adoption of the local rule 6.1.20).</i></p> <p>Are you in favor of limiting fax filing to local rule or do you think that rule 5.522 should continue to allow courts to permit fax filing by either “local rule or other written instruction?” <i>A local rule is preferable because it more accessible to all parties who might need the information.</i></p>	<p>See response above.</p> <p>The committee agrees that fax filing should be permitted only by local rule; however, the rule retains the ability for a court to disseminate the fax number and business hours by other written instruction (see revised (c)(3).</p> <p>No response required.</p> <p>No response required.</p>

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	Commentator	Position	Comment	Committee Response
			<p><i>Separate fax machine/confidentiality:</i> ...Proposed subdivision (c)(6)(A) includes revised language aimed at providing flexibility by expanding this subdivision to include a fax machine that is set up with a protocol to preserve confidentiality. Do you have any concerns about or objections to this approach? <i>No.</i></p> <p><i>General: Rule 5.522 (Fax filing) was adopted by the Judicial Council, effective January 1, 1999. No substantive changes have been made to this rule since that time. Do you have any concerns or suggested changes regarding the current fax provisions? No.</i></p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>Probably not. A revision to the fax filing rule would probably require us to amend local rules 6.1.20 and 6.9.7 to add our fax number and hours. (Our court refers people to the Business Office for the fax number and hours because it was easy to make any necessary changes. Amendments to the local rules take a long time because our court adds and revises local rules only once per year with the deadline for submitting proposals being April 15th, so it would be problematic if the need arose to change something mid-year.).</i></p> <p><b>1 Rule 5.522. FaxRemote filing</b></p>	<p>No response required.</p> <p>No response required.</p> <p>The committee recognizes the need for time to implement local rules and proposes a delayed effective date of January 1, 2015.</p>

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	Commentator	Position	Comment	Committee Response
			<p>2            3 <b>(a) Applicability <u>and definitions</u></b>            * * * <i>No comments.</i></p> <p>18 <b>(b) <u>Electronic filing</u></b>            19            20 <u>(1) A court may allow for the electronic</u>  <u>filing of documents in juvenile</u>            21 <u>dependency and delinquency court</u>  <u>proceedings, as provided under and</u>            22 <u>consistent with rule 2.252 et seq.</u>            23            24 <u>(2) This rule does not incorporate the</u>  <u>electronic service provisions in rule 2.252</u>            25 <u>et seq.</u>            26            27 <u>(3) Electronic filing must be <del>provided</del></u>  <u><b>conducted</b> in a manner that preserves the</u>            28 <u>confidentiality of records.</u>            29            30 <del><b>(b) Juvenile court documents that may</b></del>  <del><b>be filed by fax</b></del>            31            32 <b>(c) Fax filing</b>            33            34 <u>(1) Juvenile court documents that may be</u>  <u>filed by fax</u>            35            36 The following documents may be filed in            juvenile court by the use of a fax            37 machine: petitions filed under sections</p>	<p>The committee agrees to add “and definitions” to subdivision (a).</p> <p>The committee agrees to change the word “provided” to “conducted” in subdivision (b)(3).</p>

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			<p>300, 601, 602, 342, 387, 388, 777, and 778</p> <p>[<i>suggestion: put these sections in numerical order</i>].</p> <p>38 Other documents may be filed by the use of a fax machine if permitted</p> <p>39 by the local rule, <u>as described</u> <del>or other</del> <del>written instruction specified in (a).</del></p> <p>40</p> <p>1 <del>(c) Persons and agencies that may file by fax</del></p> <p>2</p> <p>3 <del>(2) <i>Persons and agencies that may file by fax</i></del></p> <p>4</p> <p>5 Only the following persons and agencies may file documents <u>by the use of a</u></p> <p>6 <u>fax machine, as stated in <del>(b)(c)(1): any</del> <del>named party to the proceeding; any</del></u></p> <p>7 <del>attorney of record in the proceeding; the county welfare department; the</del></p> <p>8 <del>probation department; the office of the district attorney; the office of the</del></p> <p>9 <del>county counsel; a CASA volunteer appointed in the case.</del></p> <p>10</p> <p>11 (A) Any named party to the proceeding;</p> <p>12</p> <p>13 (B) Any attorney of record in the proceeding;</p>	<p>The committee agrees to put these sections in numerical order.</p>



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	Commentator	Position	Comment	Committee Response
	Group		<p>Justice Harry E. Hull, Jr. (Chair, RUPRO), this rule change was proposed by a court executive officer as a means of improving court efficiency, achieving costs savings, and incorporating modern technology. On behalf of the TCPJAC and CEAC, the Joint Rules Working Group would like to acknowledge the efforts of the members of the Family and Juvenile Law Advisory Committee to assess this proposed change and develop this rule proposal.</p> <p><u>Fiscal impact</u> If courts decide to implement electronic filing, there would be a cost associated with the development and implementation of the electronic filing solution, communication to stakeholders, and staff training.</p> <p><u>Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)</u> If courts decide to implement electronic filing, changes will need to be made to the case management systems to support electronic filing and security measures will need to be taken to ensure confidentiality in the transmission of documents.</p> <p><u>Requires development of local rules and/or forms</u> Local rules will need to be created to implement electronic filing and to define documents that can be electronically transmitted, if courts</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>decide to allow electronic filing of documents other than petitions as outlined in section (c)(1).</p> <p><u>Results in additional training, which requires the commitment of staff time and court resources</u> If courts decide to implement, training will be needed for court staff.</p> <p><u>Impact on local or statewide justice partners</u> If courts decide to implement electronic filing, they will need to work closely with justice partners to develop and implement an electronic filing solution. Depending on the documents the courts decide to allow for electronic filing, there may be an impact to court users that may also require outreach.</p> <p><u>Other</u> The proposed language is sufficient to protect confidentiality and the proposal is consistent with the Branch’s overall direction with respect to e-filing.</p> <p>Allowing courts to permit fax filing by local rule is sufficient.</p>	<p>No response required.</p> <p>No response required.</p> <p>Based on totality of comments, the committee will propose the following (b)(3): <u>“Electronic filing must be conducted in a manner that preserves and ensures the confidentiality of records by encryption or other secure methods.”</u> And (b)(2): <u>“A court may allow for the electronic filing of documents directly with the court or may provide by local rule for the indirect filing through an electronic filing service provider that has in place systems to ensure the integrity and confidentiality of transmission of records and adheres to the requirements of rule 2.256(a)(1).”</u></p> <p>No response required.</p>