



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 14–15, 2016

Title

Family Law: Signatures by Local Child Support Agencies on Electronically Filed Pleadings

Agenda Item Type

Action Required

Effective Date

July 1, 2016

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 2.257

Date of Report

February 24, 2016

Recommended by

Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair
Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Contact

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Executive Summary

To implement Assembly Bill 1519, the Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee recommend amending California Rules of Court, rule 2.257, which governs the use of signatures on electronically filed documents. Effective January 1, 2016, AB 1519 amends Family Code section 17400(b)(3) to provide that local child support agencies (1) are required to maintain original signed pleadings only for the time period stated in Government Code section 68152(a), and (2) may maintain original signed pleadings by way of an electronic copy in the statewide automated child support system. AB 1519 requires the Judicial Council to develop implementing rules by July 1, 2016.

Recommendation

The Family and Juvenile Law Advisory Committee and the Information Technology Advisory Committee recommend that the Judicial Council, effective July 1, 2016, amend rule 2.257(a)(2)

of the California Rules of Court to provide that local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a).

The text of amended rule 2.257 is attached at page 5.

Previous Council Action

Judicial Council–sponsored legislation resulted in the enactment in 1999 of Code of Civil Procedure section 1010.6, which governs electronic filing and service in the trial courts and contains provisions regulating the use of signatures on electronically filed documents. Since its enactment, section 1010.6 has required that an attorney or person who electronically files a document signed under penalty of perjury (1) sign a printed form of the document before, or on the same day as, the date of filing; (2) maintain the printed document bearing the original signature; and (3) make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed. (Code Civ. Proc., § 1010.6(b)(2)(B).)

The Judicial Council subsequently adopted rule 2.257 to implement Code of Civil Procedure section 1010.6(b)(2). Rule 2.257(a) provides that the following conditions apply to electronically filed documents signed under penalty of perjury:

- (1) The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.
- (2) By electronically filing the document, the electronic filer certifies that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party.
- (3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.
- (4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.
- (5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

Rationale for Recommendation

In enacting AB 1519 this year, the Legislature amended Family Code section 17400(b)(3) to provide as follows:

Notwithstanding any other law, effective July 1, 2016, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time proscribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, by July 1, 2016, shall develop rules to implement this subdivision.

In effect, AB 1519 carves out two exceptions to Code of Civil Procedure section 1010.6(b)(2)(B) for electronically filed pleadings that are signed by local child support agencies under penalty of perjury. First, whereas Code of Civil Procedure section 1010.6(b)(2)(B) requires that the printed document bearing the original signature be maintained in its paper form, Family Code section 17400(b)(3) authorizes local child support agencies to maintain original signed pleadings in electronic form through the statewide automated child support system.

Second, whereas Code of Civil Procedure section 1010.6(b)(2)(B) provides that the signed, printed form must be maintained and made available for review upon request without specifying when, if ever, the printed document may be destroyed, Family Code section 17400(b)(3) provides that local child support agencies need to maintain the original signed pleadings only for the statutory retention periods for trial court records stated in Government Code section 68152(a). The retention period, which begins on final disposition of the case, is 30 years for court records in family cases; for adoption and parentage cases, the records are maintained permanently. (Gov. Code, § 68152(a)(7)–(9).)

To implement AB 1519, this report amends subdivision (a)(2) of rule 2.257 to recognize the two limited exceptions for child support agencies stated in Family Code section 17400(b)(3). Rule 2.257(a)(2) currently provides that by electronically filing a document, the electronic filer certifies that he or she has complied with subdivision (a)(1), which requires that a printed form of the document be signed before filing, and also certifies that the original, signed document is available for inspection and copying at the request of the court or any other party.

This report adds the following language to subdivision (a)(2): “Local child support agencies may maintain original, signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for the period of time stated in Government Code section 68152(a). If the local child support agency maintains an electronic copy of the original, signed pleading in the statewide automated child support system, it may destroy the paper original.”

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for comment from December 11, 2015, to January 22, 2016, as part of the winter 2016 invitation-to-comment cycle. It was distributed to the standard mailing list for family and juvenile law proposals, which includes appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, and other juvenile law professionals. Six organizations provided comment; five agreed with the proposal and one agreed if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 6–9.

The Superior Court of Los Angeles County recommended adding language to the rule amendment to clarify that local child support agencies need not retain the original signed pleading in paper form if they maintain an electronic copy in the statewide automated child support system. The advisory committees agreed with the recommendation and modified the rule amendment to make this exception clear.

Because the rule amendment is mandated by legislation, the advisory committees did not consider any alternatives.

Implementation Requirements, Costs, and Operational Impacts

The rule amendment is directed toward local child support agencies and governs how and for how long they maintain original, signed pleadings. The amendment is unlikely to result in any costs or operational impacts on the courts.

Attachments and Link

1. Cal. Rules of Court, rule 2.257, at page 5
2. Chart of comments, at pages 6–9
3. Link A: Assembly Bill 1519 (Stats. 2015, ch. 416),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1519

Rule 2.257 of the California Rules of Court is amended, effective July 1, 2016, to read:

1 **Rule 2.257. Requirements for signatures on documents**

2
3 **(a) Documents signed under penalty of perjury**

4
5 When a document to be filed electronically provides for a signature under penalty
6 of perjury, the following applies:

- 7
8 (1) The document is deemed signed by the declarant if, before filing, the
9 declarant has signed a printed form of the document.
- 10
11 (2) By electronically filing the document, the electronic filer certifies that (1) has
12 been complied with and that the original, signed document is available for
13 inspection and copying at the request of the court or any other party. Local
14 child support agencies may maintain original, signed pleadings by way of an
15 electronic copy in the statewide automated child support system and must
16 maintain them only for the period of time stated in Government Code section
17 68152(a). If the local child support agency maintains an electronic copy of
18 the original, signed pleading in the statewide automated child support system,
19 it may destroy the paper original.
- 20
21 (3) At any time after the document is filed, any other party may serve a demand
22 for production of the original signed document. The demand must be served
23 on all other parties but need not be filed with the court.
- 24
25 (4) Within five days of service of the demand under (3), the party on whom the
26 demand is made must make the original signed document available for
27 inspection and copying by all other parties.
- 28
29 (5) At any time after the document is filed, the court may order the filing party to
30 produce the original signed document in court for inspection and copying by
31 the court. The order must specify the date, time, and place for the production
32 and must be served on all parties.

33
34 **(b)–(e) * * ***

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

	Commentator	Position	Comment	Committee Response
1.	Los Angeles County Bar Association (no name provided)	A	<p>“PROPOSAL: AB 1519 proposes to amend subdivision (a) (2.257) to recognize two limited exceptions for child support agencies under Family Code § 17400(b)(3). Currently Rule 2.257(a)(2) requires that the electronic filer keep a printed form of the document signed before filing and that the original signed document is available for inspection and copying at the request of the court or any other party. The rule proposal would add a sentence to subdivision (a)(2) to recognize that local child support agencies may maintain original signed pleadings by way of an electronic copy in the statewide automated child support system and must maintain them only for a period of time stated in Government Code §68152(a) which is 30 years.</p> <p>REQUEST FOR COMMENTS: The Advisory Committee is interested in receiving comments on whether this proposal addresses the stated purpose of AB 1519. LACBA Response: Yes”</p>	No response required.
2.	Orange County Bar Association by Todd G. Friendland, President	A	“Does the proposal appropriately address the stated purpose? YES.”	No response required.
3.	State Bar of California Family Law Section by Fariba R. Soroosh and Saul Bercovitch	A	“The Executive Committee of the Family Law Section supports this proposal.”	No response required.

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			<p>exception. The following additional language is proposed to eliminate any ambiguities, possible confusion and to promote consistency between CCP and the Family Code.</p> <ul style="list-style-type: none"> ○ “Local child support agencies may maintain original signed pleading by way of an electronic copy in the Statewide Automated Child Support System, <i>in lieu of the paper original</i>, and must maintain them only for the period of time stated in Government Code Section 68152(a).” ○ By adding the words “in lieu of a paper original,” ambiguities are eliminated and consistency is promoted. <p><u>Forms:</u></p> <ul style="list-style-type: none"> • There are no new forms. <p><u>Costs/Operational Impact:</u></p> <ul style="list-style-type: none"> • No new costs or operational changes are associated as the proposed amendment to the rule is the current method of maintaining and receiving electronic filings by the LASC.” 	
5.	Superior Court of Riverside County (no name provided)	A	No specific comment.	No response required.

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6.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	A	No specific comment.	No response required.
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