



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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 28, 2013

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Title	Agenda Item Type
Electronic Filing and Service: Rules Allowing the Superior Courts to Mandate Electronic Filing and Service in Civil Cases	Action Required
	Effective Date
	July 1, 2013
Rules, Forms, Standards, or Statutes Affected	Date of Report
Amend Cal. Rules of Court, rules 2.250–2.254, 2.256, 2.258, and 2.259; and approve forms EFS-007 and EFS-008	June 21, 2013
Recommended by	Contact
Court Technology Advisory Committee	Patrick O'Donnell, 415-865-7665
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Civil and Small Claims Advisory Committee	
Hon. Dennis M. Perluss, Chair	

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### Executive Summary

To implement Assembly Bill 2073, the Court Technology Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending the California Rules of Court to allow superior courts by local rule to require parties to electronically file and serve documents in civil cases, subject to conditions provided by statute and in the rules. The committees also recommend the approval of two new optional Judicial Council forms to be used by parties to request exemptions from mandatory electronic filing and service and by courts to rule on those requests.

## Recommendation

The Court Technology and the Civil and Small Claims Advisory Committees recommend that the Judicial Council, effective July 1, 2013:

1. Amend Cal. Rules of Court, rules 2.250–2.254, 2.256, 2.258, and 2.259 to provide for mandatory electronic filing and service; and
2. Approve optional *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007) and *Order of Exemption From Mandatory Electronic Filing and Service* (form EFS-008).

The text of the amended rules is attached at pages 44–53. Copies of forms EFS-007 and EFS-008 are attached at pages 54–55.<sup>1</sup>

## Previous Council Action

The Judicial Council previously adopted rules on electronic filing and service in the superior courts. These rules—located in the California Rules of Court, rules 2.250–2.261—principally concern electronic filing and service by the consent of the parties in civil cases. The rules previously adopted also address court-ordered electronic filing and service in class actions, consolidated actions, groups of actions, coordinated actions, and complex cases (collectively “complex civil cases”). But no rules have been adopted concerning mandatory e-filing and e-service in ordinary civil cases.

## Rationale for Recommendation

The enactment of Assembly Bill 2073 (Silva; Stats. 2012, ch. 320) has changed the legal framework for electronic filing and service.<sup>2</sup> The legislation amended Code of Civil Procedure section 1010.6 to authorize a mandatory electronic filing pilot project in the Superior Court of Orange County and to require 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.

The Court Technology and the Civil and Small Claims Advisory Committees, with the assistance of the AB 2073 Mandatory E-Filing Working Group,<sup>3</sup> have developed proposed amendments to the California Rules of Court to provide uniform, statewide rules on mandatory electronic filing

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<sup>1</sup> In addition, Guidelines for Reports on Mandatory Electronic Filing and Service, approved by the Judicial Council Technology Committee, are attached at page 56.

<sup>2</sup> The text of AB 2073 is available at: [www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_2051-2100/ab\\_2073\\_bill\\_20120914\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2051-2100/ab_2073_bill_20120914_chaptered.pdf).

<sup>3</sup> The members of the working group are Justice Terence L. Bruiniers (Chair), Judge James E. Herman (Vice–Chair), Saul Bercovitch, Judge Thomas James Borris, Judge Daniel J. Buckley, Judge Robert B. Freedman, Tom Griffin, Judge Curtis E. A. Karnow, Paul R. Kiesel, Suzanne Martindale, Edith Matthai, Judge Robert J. Moss, Judge Gary Nadler, Snorri Ogata, Judge Alan G. Perkins, Judge Glen M. Reiser, Court Executive Officer Michael M. Roddy, Julie Rogado, Becky Stilling, and William T. Tanner.

and service in the trial courts. The Judicial Council’s adoption of the statewide rules for mandatory electronic filing and service for civil actions will enable any superior court, by local rule, to require parties to electronically file and serve documents, subject to certain requirements and conditions in the statute and statewide rules. Under the statewide rules, mandatory electronic filing and service would be permissive for the superior courts— it would be left to each court to determine whether and how to institute such filing and service—but mandatory for litigants subject to the rules adopted by the courts.

Because of the benefits to courts and the public of having mandatory electronic filing and service, the committees recommend that the Judicial Council adopt the amended rules effective July 1, 2013, so that other courts in addition to the Superior Court of Orange County may promptly institute mandatory electronic filing and service in civil cases. The proposal also includes some amendments to the general rules on electronic filing and service to improve them and make them clearer. And it recommends that two new optional Judicial Council forms be approved to implement the rules on mandatory electronic filing and service.

## **Proposed rules and forms**

### **New rule provisions on mandatory electronic filing and service**

The main new rule provisions concerning mandatory electronic filing are in amended rule 2.253. That rule, which currently relates only to electronic filing by court order in complex civil cases, would be expanded and renamed “Permissive electronic filing, mandatory electronic filing, and electronic filing by court order.”

A new subdivision (a) on permissive electronic filing would be added at the beginning of the rule to clarify that a court by local rule may allow parties to voluntarily file documents electronically “in any types of cases.” The key new provisions concerning mandatory electronic filing for ordinary civil cases would be located in subdivision (b), titled “Mandatory electronic filing.”

#### ***Authorization for mandatory electronic filing.***

The threshold issue addressed in new subdivision (b) of rule 2.253 is to provide an express authorization for trial courts to institute electronic filing. This provision states: “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 certain conditions specified in rule 2.253.<sup>4</sup> (Amended rule 2.253(b).)

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<sup>4</sup> Code of Civil Procedure section 1010.6 contains various conditions that apply generally to electronic filing and service and others that apply specifically to mandatory e-filing and service. Also, under AB 2073, amended Code of Civil Procedure section 1010.6(f) provides that the Judicial Council shall adopt uniform rules that shall include statewide policies on, among other things, unrepresented parties, parties with fee waivers, hardships, and reasonable exceptions to electronic filing. Thus, certain conditions are specified in the statute and others are to be provided by rule. (See amended Code Civ. Proc., § 1010.6(g)(2).)

***Scope of mandatory e-filing: Exemption of self-represented parties.***

One of the most important issues concerning the new provisions on mandatory electronic filing is whether self-represented parties should be subject to mandatory e-filing or should be exempt. Such an exemption is permitted under AB 2073: the legislation states that the mandatory e-filing rules adopted by the council shall include statewide policies on hardships and “reasonable exceptions to electronic filing.” (Assem. Bill 2073; amended Code Civ. Proc., § 1010.6(f).) The issue is basically whether the uniform rules should provide that self-represented parties (1) may be required by local rule to file and serve documents electronically, with the opportunity to “opt out,” or (2) should be exempt from any requirements to file and serve documents electronically but should be given the opportunity to “opt in.”

This question was discussed extensively in the public comments, which are described later in the report. Based on consideration of all the comments, the committees recommend that amended rule 2.253(b)(2) provide:

Self-represented parties are exempt from any mandatory electronic filing and service requirements adopted by courts under this rule and Code of Civil Procedure section 1010.6.

At the same time, to reflect the policy favoring voluntary e-filing by self-represented persons, the committees recommend adding an Advisory Committee Comment to rule 2.253 stating:

Although this rule exempts self-represented parties from any mandatory electronic filing and service requirements, these parties are encouraged to participate voluntarily in electronic filing and service. To the extent feasible, courts and other entities should assist self-represented parties to electronically file and serve documents.

***Scope of mandatory e-filing: Issue of mixed cases if-represented parties are excluded.***

Assuming that the rules are amended to exempt self-represented parties from mandatory e-filing, a related issue arises regarding whether to authorize mandatory e-filing in mixed cases in which both attorneys and self-represented litigants are involved. Limiting mandatory e-filing to only those cases in which *all* parties were represented by attorneys would have important consequences. It would significantly limit the impact of mandatory e-filing—for example, excluding the possibility of requiring e-filing in many collections and unlawful detainer cases.

The amended rules on mandatory e-filing address this issue. Specifically, the committees recommend authorizing mandatory electronic filing and service for attorneys in civil cases that also involve self-represented litigants, but specifying that the electronic filing and service requirements apply only to the represented parties in these cases. Self-represented parties in mixed cases would file and serve documents and be served by conventional means unless they affirmatively agree otherwise. Thus, the committees recommend providing in rule 2.253(b)(3):

In civil cases involving both represented and self-represented parties, represented parties may be required to file and serve documents electronically; however, in these mixed cases, each self-represented party is to file, serve, and be served with documents by non-electronic means unless the self-represented party affirmatively agrees otherwise.

***Procedures for “opting out” based on hardship.***

Even if self-represented persons are exempted from mandatory e-filing, the e-filing statute requires that a hardship exception “not limited to . . . unrepresented parties” be included in the rules. (Code Civ. Proc., § 1010.6(d)(1)(C) and (g)(2).) Thus, the uniform rules need to include such a provision regardless of whether self-represented parties are exempt from mandatory e-filing. The rules on mandatory electronic filing and service that were circulated for comment included a provision relating to requests for a hardship exception:

A party that is required to file documents electronically must be excused from the requirements if the party shows undue hardship or significant prejudice. A court requiring the electronic filing of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.

The committees recommend that this provision be included as rule 2.253(b)(4) of the rules on electronic filing and service.

Because the “opt out” procedure for represented parties does not need to be as precisely drawn as it would be if it had applied to self-represented parties, the committees do not recommend the adoption of a detailed procedure at this time. Rule 2.253(b)(4) appears sufficient to address the situation of represented parties that need to ask to be excused from e-filing. The particular procedures to be used to “opt out” may be left to courts to determine locally consistent with the law. In the future, based on experience with mandatory e-filing and e-service, advisory committees could further develop the statewide rules on the procedures for “opting out” of mandatory electronic filing if that appears necessary or desirable.

***Scope of mandatory e-filing: Types and categories of civil cases.***

Another issue addressed in subdivision (b) of rule 2.253 is what types and categories of cases are appropriate for mandatory e-filing. The new legislation, AB 2073, gives the Judicial Council broad leeway on this matter. It provides that the council “shall, on or before July 1, 2014, adopt uniform rules to permit the mandatory electronic filing and service of documents for *specified civil actions* in the trial courts of the state.” (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)] (italics added).) Except for identifying the actions as civil, the statute does not state what the specified actions are.

The committees discussed various alternatives, including the exclusion of certain types of cases such as juvenile cases. They concluded that the range of types of civil cases in which a court might require parties to file documents electronically should be very broad. Thus, the rule

enumerates numerous kinds of civil cases that are eligible for mandatory e-filing: it would be left to each court to specify the types or categories of civil actions in which parties are required to file documents electronically in that court. (See amended rule 2.253(b)(1).) Under this approach, the trial courts will have the flexibility to determine which types or categories of civil cases are subject to mandatory e-filing. The courts will be able to implement electronic filing in a practical, incremental way depending on the needs and resources of the courts and the public that they serve.

***Effective date of electronic filing: To be determined by “close of business” or midnight on filing day.***

Another issue that the rules must address is what should be the effective date of electronically filed documents. This issue is complicated. There are currently two inconsistent provisions on this matter in the statute on electronic filing: a general provision for documents that are filed electronically by consent of the parties or by court order and a different one for documents that are filed under Orange County’s mandatory electronic filing pilot project.

Code of Civil Procedure section 1010.6(b)(3), applicable to electronic filing generally, provides:

Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day.<sup>5</sup> “Close of business,” as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court’s filing counter, whichever is earlier.

On the other hand, section 1010.6(d)(1)(D), applicable to the mandatory e-filing pilot project in Orange County, provides, in part:

A court that elects to require electronic filing pursuant to this subdivision may permit documents to be filed until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely. However, if same day service of a document is required, the document shall be electronically filed by 5 p.m. on the court day that the filing is due.

AB 2073 leaves open the issue of what standard should be adopted for mandatory e-filing under the new uniform rules but keeps in place the current standard—that is, an electronic filing is effective on the next court day if filed after the “close of business”—for cases where e-filing is by consent of the parties or by court order.

In the long term, it appears best to have a single standard for all types of electronic filing, whether voluntary or mandatory. But at this time, the question to be resolved is: What standard

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<sup>5</sup> The current rules of court contain a similar, though not identical, provision. (See rule 2.259(c):“A document that is received electronically by the court after the close of business is deemed to have been received on the next court day.”)

should be recommended for mandatory electronic filing in civil cases under the rules: (1) the same “close of business” standard that is used for voluntary electronic filing, or (2) a new standard that would allow electronic filings before midnight to be counted on the day they are electronically filed rather than the next court day?

As discussed further below, the commentators were quite divided over this question. The committees recommend that the rules of court on mandatory electronic filing provide for the “close of business” standard but give individual courts the option of adopting instead the “file until midnight” standard by local rule.<sup>6</sup> This flexibility will allow for experimentation and the collection of information about courts’ experiences with mandatory electronic filing, which are some of the purposes of AB 2073. The committees also recommend that courts that establish mandatory e-filing programs be required to report to the Judicial Council on their experiences, including their experiences with different effective times of filing.<sup>7</sup> This feedback will provide a basis for evaluating different practices and procedures and for making future recommendations, including recommendations about what should be the effective time of electronic filing.

***Other electronic filing issues.***

The same paragraph in AB 2073 that has new language about the time for electronically filing documents contains a provision about ex parte applications: “. . . Ex parte documents shall be electronically filed on the same date and within the same time period as would be required for the filing of a hard copy of the ex parte documents at the clerk’s window in the participating county.” (See Code Civ. Proc., § 1010.6(d)(1)(D).) It appears unnecessary to add such a provision in the statewide rules. Under the rules, the same deadlines that apply to conventionally filed documents also apply to electronically filed documents. (See current rule 2.252(f) (“Filing a document electronically does not alter any filing deadline.”)<sup>8</sup> Because ex parte applications must follow this general rule, there is no reason to single out ex parte applications for attention in the rules. If a particular document must be filed by a certain time of day, that document needs to be filed by that time—whether it is filed electronically or on paper.

To the extent that there may be some uncertainty about the basic rule that the same deadlines apply for electronically filed documents as for conventionally filed documents, this issue is addressed in the amended rules by relocating the provision in current rule 2.252(f) to be more prominent. (See amended rule 2.252(c)(2).) This approach to clarifying the law appears

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<sup>6</sup> Amended rules 2.253(b)(7) and 2.259(c) have been revised to allow for this option.

<sup>7</sup> To accomplish this, a new subparagraph (8) would be added to rule 2.253(b) stating:

A court that adopts a mandatory electronic filing program under this subdivision must report semiannually to the Judicial Council on the operation and effectiveness of the court’s program.

A set of guidelines has been developed to assist courts in preparing and submitting reports under this provision.

<sup>8</sup> The federal courts follow the same general rule. See U.S. District Court, Northern District of California, Order No. 45, VI.D (“Filing documents does not alter any filing deadlines”).

preferable to having a particular rule or statutory provision applicable only to ex parte applications.

***New rule provisions on mandatory electronic service.***

AB 2073 requires the Judicial Council to “adopt uniform rules to permit the mandatory electronic filing *and service* of documents for specified civil actions in the trial courts of the state.” (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)](italics added).) Hence, this proposal includes certain rule changes relating to the electronic service as well as the electronic filing of documents. Clarification of the rules on electronic service is especially important for self-represented litigants but affects everyone who serves documents electronically.

Several specific changes to rule 2.251—on electronic service—are included in the proposed rules. Some of these changes are technical: they are designed to eliminate ambiguities on how electronic service will operate in a court that mandates electronic filing under the new rules. However, some of the proposed changes are more substantive.

First, the current rule on electronic service by consent of the parties provides that a party can consent either (1) by serving notice on all parties that the party accepts electronic service and filing, or (2) by electronically filing any document with the court. (See amended rule 2.251(b)(1)(A)–(B).) Based on the comments, the committees recommend changing this rule so that electronically filing will not be deemed consent for self-represented parties; they must affirmatively consent to electronic service. The reason for this change is that, as the commentators persuasively argued, electronic filing and service need to be treated separately for self-represented parties. Many self-represented parties, who might be able to receive assistance with electronic filing from self-help centers and legal aid organizations, might not be able to electronically serve or receive service of documents—for example, because they have no computer. Thus, it is unreasonable to assume that e-filing by self-represented parties constitutes consent to e-service. Furthermore, this presumption may actually discourage these parties from seeking assistance with e-filing because the filing would result in their being compelled to accept e-service which they are unable to do.

Second, a new subdivision (c), entitled “Electronic service required by local rule or court order,” would be added to rule 2.251. To clarify the impact of AB 2073, it would state that “[a] court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in the chapter” on electronic service and filing. (See amended Cal. Rules of Court, rule 2.251(c)(1).) In addition, the new subdivision would include a provision establishing a default service procedure for cases involving mandatory electronic filing. It would provide that, except when personal service is otherwise required by statute or rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties, unless (1) the court orders otherwise, or (2) the action includes parties that are not required to file or serve documents electronically, including self-represented parties; those parties are to be served by nonelectronic methods unless they consent to electronic service. (See



amended rule 2.251(c)(2).) Finally, another new provision would be added in subdivision (c) that would state that “[e]ach party that is required to serve and accept service of documents electronically must provide all other parties in the action with its electronic service address and must promptly notify all other parties and the court of any changes.” (See amended rule 2.251(c)(3).)

A final electronic service question relates to the issue discussed previously about when an electronic filing is effective. The rules on electronic service currently provide that “[s]ervice that occurs after the close of business is deemed to have occurred on the next court day.” (See current rule 2.251(f)(4).) The committees do not recommend changing this rule at the present time. However, if the statute and rules on the effective date of electronic filing are changed in the future to provide for the “file until midnight” standard, the statute and rules on service might also be amended to provide that service that occurs before midnight on a court day is deemed to have occurred on that day.

***Fees and fee waivers.***

AB 2073 enumerates certain conditions and specifies various matters that are to be included in the uniform rules to be adopted on mandatory electronic filing and service, including statewide policies on parties with fee waivers. (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)].) To implement the new statutory provisions, the following paragraphs would be included in rule 2.253(b):

- (5) Any fees charged by the court shall be for no more than the cost actually incurred by the court in providing for the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable.
- (6) Any fees for electronic filing charged by the court or by an electronic filing service provider must be waived when deemed appropriate by the court, including providing a waiver of the fees for any party that has received a fee waiver.

Because provisions similar to these are included in the statute, their inclusion in the rules may not be strictly necessary; however, AB 2073 contemplates that there will be rules relating to fees and fee waivers in the new rules on mandatory electronic filing and service. Also, including these specific provisions in the rules offer advantages. First, these key provisions would be in the rules along with the other significant provisions relating to mandatory electronic filing. All the principal conditions and requirements relating to such filings would be together in one place in the rules. Second, the general rules on electronic filing and service already contain other provisions regarding fees and fee waivers. (See current rules 2.252(c), 2.255(b) and 2.258.) Thus, for the sake of comparison and clarity, including specific provisions on fees and fee waivers in the rule on mandatory electronic filing would be useful.

## **Other rule changes**

In addition to the rule changes described above, the committees recommend other rule changes that may be useful to improve and promote the electronic filing and service of documents and to clarify the processes of electronic filing and service.

### ***Filing through EFSPs or directly.***

The current e-filing rules and statute are not as clear as they should be that electronic filing can be done through an electronic filing service provider (EFSP) or directly into the court, if the court has that capacity.<sup>9</sup> This clarification is important because some trial courts may want to institute mandatory direct e-filing under the new uniform rules. Thus, it is useful to clarify in the rules that e-filing is permissible by *both* direct and indirect means—and that a court can mandate electronic filing by either means.

To effectuate this purpose, in the draft rules, rule 2.252 would be renamed “General rules on electronic filing of documents,” and a new subdivision (b), “Direct and indirect electronic filing,” would be added to the rule. The new subdivision would state that, except as otherwise provided by law, 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.

The main rule on mandatory electronic filing, rule 2.253, would also be amended to state in new subdivision (b) that “[a] court may require parties by local rule to electronically file documents in civil actions directly with the court, or directly with the court and through one or more approved electronic filing service providers, or through more than one approved electronic filing service provider.”<sup>10</sup>

### ***Notification of EFSPs.***

A problem has been identified is that parties filing and serving documents through electronic filing service providers sometimes fail to notify the EFSPs of changes in their contact information. This problem was noted as arising particularly often with self-represented parties who may use an EFSP for filing electronically on a one-time basis, but after initially filing electronically fail to keep the EFSP informed about how to contact them. No rule currently

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<sup>9</sup> AB 2073 contains language concerning the pilot project that assumes that direct e-filing is an option. One of the conditions specified in the statutory amendments for having a mandatory e-filing program is: “The court and the parties shall have access either to more than one electronic filing service provider capable of electronically filing documents with the court, *or to electronic filing access directly through the court.*” (Assem. Bill 2070; amended Code Civ. Proc. 1010.6(d)(1)(B)(italics added).)

<sup>10</sup> In the case of mandatory e-filing, the option for a court to provide for e-filing exclusively through a single electronic service provider appears to be precluded by AB 2073, which requires that parties have access to more than one provider capable of electronically filing documents with the court. (See amended Code Civ. Proc., § 1010.6(d)(1)(B)). To change this requirement for cases involving mandatory e-filing may require additional legislation.

expressly addresses this issue. To fill this gap, rule 2.256, on the responsibilities of the electronic filer, would be amended to add a new paragraph (a)(6) stating that the electronic filer must:

If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

Because this provision would apply to all electronic filers, it is placed in rule 2.256 on the duties of electronic filers rather than in a separate rule for self-represented parties. To the extent the failure to provide contact information is a special problem for self-represented parties, the duty to provide updated information may be highlighted in instructions and information provided to self-represented parties by courts, self-help-centers, EFSPs, and others.

***Filing in paper form.***

Another issue concerns situations under which it is appropriate for electronic filers to file certain documents in paper form rather than electronically. Current rule 2.253(c) provides: “When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, a court may allow that party to . . . file the document in paper form . . . .” Because of its present location, this provision appears to apply only to documents filed by court order in complex civil cases. This provision should in fact apply to all electronic filings; so, in the amended rules, it has been relocated to rule 2.252, “General rules on electronic filing of documents,” as subdivision (d), “Filing in paper form.”

***Definition of “electronic filing.”***

A final rule issue that warrants clarification is the definition of “electronic filing” in rule 2.250(b)(7). It is currently defined as “the electronic transmission to a court of a document in electronic form.” To distinguish this definition from other meanings of “filing,” it would be useful to add: “For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document and its entry into the court records, which are necessary for the document to be officially filed.” Similar clarifications have been added to rules 2.253(b)(7) and 2.259(c).

These clarifications should make the meaning of the term “electronic filing” clearer when it is used throughout the chapter. For example, when it is used to specify the effective date of a filing, the time of transmission—not of processing or the completion of processing—is determinative. California law recognizes that the process for filing documents may sometimes not be completed until a day or more after the documents are received by the court and, to protect filers, provides for this contingency by prescribing that the date of receipt shall be deemed the date of filing. (See Cal. Rules of Court, rule 1.20(a): “Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.”) Like rule 1.20(a), the proposed clarification of the definition of “electronic filing” in the rules on electronic filing is intended to protect the rights of filers—in this case electronic filers. The rule changes clarify that, for purposes of the effective

date of filing, the date of receipt applies, even if the filing process is not completed until a later date.

### **New Forms for Requesting and Ruling on Exemptions**

To assist in implementing the new law—and in particular to help parties requesting exemptions from mandatory electronic filing and service and courts issuing orders on these requests—two new optional Judicial Council forms have been developed:<sup>11</sup>

- *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007)
- *Order of Exemption From Mandatory Electronic Filing and Service* (form EFS-008)

If all self-represented parties were subject to mandatory e-filing and had to opt out, these forms would have been of much greater impact: virtually every self-represented party seeking to be excused from mandatory e-filing and e-service would have had to use the forms. However, assuming self-represented parties are exempt, the forms will be used only by represented parties. The forms would still be useful to those parties and the courts. Based on the public comments discussed below, the forms have been modified to be clearer and more effective. The committees recommend that the Judicial Council approve these forms for optional use.

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

The proposed rules and forms were circulated for public comment between December 14, 2012 and January 25, 2013. Forty-two commentators submitted or joined in 33 comments. The commentators included legal aid and disability rights organizations, consumer groups, State Bar committees, attorneys, electronic filing service providers, legal publishers, press organizations, and seven superior courts. Comments were also provided by the California Judges Association, the California Commission on Access to Justice, and the Task Force on Self-Represented Litigants.

The comments, presented in the attached comment chart,<sup>12</sup> were extensive. They addressed a wide range of issues, including whether self-represented litigants should be excluded from mandatory e-filing and whether electronic filings should be effective at the “close of business” on the day of filing or should be allowed to be filed until midnight. To make the comments easier to understand, they have been divided by topic into 302 separate comments—organized into three broad categories that have been used in the comment chart:

- General comments (comments 1–33)

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<sup>11</sup> These forms are based on a local application and order form developed by the mandatory e-filing pilot court, the Superior Court of Orange County.

<sup>12</sup> The comment chart is attached at pages 57–289.

- Comments on particular issues (comments 34–92)
- Comments in response to the request for specific comments in the invitation to comment (comments 93–302)

This report reviews the comments by summarizing the main rules and forms proposals that were circulated, the specific comments received on each of them, and the committees’ responses to these comments.

### **Comments on new rule provisions on mandatory electronic filing and service**

The main new rule provisions concerning mandatory electronic filing are in amended rule 2.253. The rule would be expanded and renamed “Permissive electronic filing, mandatory electronic filing, and electronic filing by court order,” and a new subdivision (a) on permissive electronic filing would be added at the beginning of the rule stating that a court by local rule may allow parties to voluntarily file documents electronically “in any types of cases.” No comments were received on these changes.

#### ***Authorization for mandatory electronic filing.***

The key new provisions concerning mandatory electronic filing for ordinary civil cases are in subdivision (b) of rule 2.253, which has been titled “Mandatory electronic filing.” This subdivision provides an express authorization for trial courts to institute electronic filing: “A court may require parties by local rule to electronically file documents in civil actions . . . .” Thus, new subdivision (b) directly implements AB 2073 by authorizing courts to establish mandatory electronic filing and service by local rule.

In general, the commentators supported the overall project to establish mandatory e-filing for civil cases in California. (See comment 1 (“Great move”).) The only commentator who objected directly to the rules on mandatory e-filing and e-service was an attorney. He complained that requiring a person or an attorney to file documents electronically, and to pay a fee to an electronic filing service provider, constitute improper limitations on the person’s right to access justice. He proposed that the rules state that a court may encourage—not require—parties to serve and file documents electronically. (See comment 10.) The committees disagreed with these comments and suggestions. Changing the rules to encourage but not require electronic filing would be inconsistent with the intent and language of the Assembly Bill 2073, which this rules proposal implements.

Another commentator stated: “Our rule for electronic filing has always been ‘Don’t make it mandatory, make it irresistible.’” (Comment 118.) To the extent this is an objection to establishing mandatory e-filing the committees disagreed with it; on the other hand, making e-filing “irresistible” is certainly a worthy goal.

The California Judges Association supported the mandatory e-filing rules. It commented that e-filing should be authorized in all civil cases with two caveats—one of which was that mandatory e-filing “should not be made mandatory unless and until the court has the technological capacity

sufficient to implement it.” (Comment 4.) The committees agreed with this caveat but did not think it is necessary to expressly provide a requirement for technological capacity in the rules. Courts can be relied on not to embark on mandatory e-filing until they have an effective system available.

***Scope of mandatory e-filing: Self-represented parties.***

A crucial issue in establishing the rules on mandatory e-filing is whether self-represented parties should be subject to it but be allowed to “opt out,” or should be exempt but be allowed to “opt in” to electronic filing. Commentators were specifically asked to address whether self-represented parties should be excluded from mandatory e-filing and numerous comments were submitted on this issue. (See comments 40–52 and 116–135.)

Approximately three-fourths of the commentators recommended excluding self-represented litigants entirely from the mandatory electronic filing and service rules. These included many legal aid organizations, three state bar committees, the California Judges Association, the California Commission on Access to Justice, and the Task Force on Self-Represented Litigants. These commentators also often expressed the position that self-represented litigants should be allowed to voluntarily opt in to electronic filing and service.

Support for including self-represented litigants in mandatory e-filing and e-service came from superior courts, the Trial Court Presiding Judges and Court Executives Advisory Committees (TCPJ/CEAC) Joint Rules Committee, and a few attorneys. The Superior Courts of Orange County, Riverside, Sacramento, and San Bernardino Counties opposed a general exemption for self-represented litigants. (See comments 129, 130, 131, and 132.) However, the San Diego Superior Court supported exempting them. (See comment 133.) The Los Angeles Superior Court took the position that “[a] court should be allowed to exempt self represented litigants from family and small claims cases, but not in general civil cases. The rules should provide some flexibility so that an individual court can decide whether exemptions should occur in certain case types . . . . If only one rule must apply, then self-represented litigants should be exempt.” (Comment 128.) The TCPJ/CEAC Joint Rules Committee took the position: “Allow each trial court to determine by case type whether it is mandatory for self-represented litigants to file electronically or whether they may file by conventional means. Where mandatory, the self-represented litigant must request permission to opt out of the requirement based on undue hardship or significant prejudice.” (See comment 50)

Those who supported an exemption for all self-represented litigant presented extensive arguments and information in support of their position. (See, for example, comments 44–49, 116–117, and 121–127.) These commentators were concerned that mandatory e-filing would pose a significant barrier to access to justice for many self-represented litigants. They pointed out that many such individuals have no access to computers or the internet.<sup>13</sup> Even if equipped with necessary technology, many self-represented litigants lack the computer literacy necessary to file

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<sup>13</sup> For information about the extent of computer and internet access, see comments 49, 51, 116, 117, and 124.

documents with the courts. These commentators thought that mandatory e-filing would be particularly problematic in many of the types of cases—such as family law and domestic violence cases—in which self-represented litigants are extensively involved. A number of commentators also pointed out that e-filing and e-service could be especially challenging for individuals with low-incomes (and no credit cards), persons with limited English proficiency, persons with disabilities, and the elderly.<sup>14</sup> Particularly in the present fiscal crisis, legal aid organizations and self-help centers lack sufficient resources to assist all self-represented persons to file and serve documents electronically. If instead of providing a general exemption for self-represented parties courts needed to excuse self-represented litigants on an individual basis, this would be costly and burdensome for both the litigants and the courts. Providing the alternative that self-represented litigants are exempt from e-filing, but may voluntarily opt in, would be more efficient and would enable those who can file electronically to benefit from the process. Courts, to the extent they have the ability and resources to do so, could promote e-filing by assisting self-represented persons to e-file.

Those who opposed an exemption for self-represented litigants provided arguments in support of that position. (See, for example, comments 42 and 129.) They contend that a blanket exemption would reduce the benefits of e-filing and that the impact of mandatory e-filing on self-represented litigants is small. An attorney commented that e-filing and e-service provide “significant cost and time savings which self-represented parties should enjoy. They should definitely not be automatically excluded.” (Comment 42.) The Superior Court of Orange County, where the mandatory e-filing pilot project started in January 2013, stated: “By initially treating [self-represented litigants] like all other litigants, we will encourage all parties to file from the comfort of their home, office, or through an assistance group such as self-help or legal aid, and enable the court to benefit from the financial efficiencies generated by mandatory e-filing. Simple electronic and over-the-counter procedures will be available to address the needs of the small minority of litigants who are unable to file electronically.” (Comment 129.)<sup>15</sup> The Riverside Superior Court commented: “If a blanket exemption existed, [self-represented litigants] would be relieved of e-filing with no apparent justification for the exemption.” (Comment 130.)

The committees reviewed the comments. They thought that the majority of the commentators provided good, detailed reasons why it would not be prudent to require self-represented parties to file documents electronically at this time. Thus, the committees recommend that, for the present, self-represented litigants be exempt from mandatory e-filing and service. (See amended rule 2.253(b)(2).) Also, the committees strongly support voluntary e-filing and e-service by self-represented parties, to the extent this is feasible. Although self-represented parties should not be required to “opt out” of mandatory electronic filing and service, they should be encouraged and

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<sup>14</sup> See, for example, comments 9 (Attachment B), 12 (Attachment C), 51, 87, 89, 91, 122, and 124.

<sup>15</sup> The court observed that in its first eight days of mandatory e-filing, there were “over 22,000 civil e-filings and only one hundred and ten requests for e-filing exemptions, indicating that the large majority of litigants are both capable and willing to electronically file their documents.” (Comment 129.)

assisted to “opt in” if possible. The committees thought that this policy should be reflected in the rules; thus, they recommend including a statement of this policy in the Advisory Committee Comment to rule 2.253.

The committees’ recommendations to exclude self-represented parties from mandatory e-filing—yet strongly encourage voluntary e-filing—are consistent with *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* (“*Guiding Principles*”) adopted by the Judicial Council in August 2012.<sup>16</sup> The *Guiding Principles* recognize, “Because so many cases now involve self-represented parties, technology must be implemented in ways that benefit those with or without legal representation so that all parties have equal access to the courts.” (*Guiding Principles*, at page 6.) The *Guiding Principles* also indicate: “recent trial court projects demonstrate that e-filing will evolve and expand in functionality and use, including service for self-represented litigants. Likewise adoption of and trust in e-filing will also grow and expand....As it does, courts must continue to ensure fair and equal electronic access to all parties, including self-represented litigants.” (*Id.*)

The committees’ recommendations are also consistent with the approach to e-filing recommended in a 2013 report by the Electronic Filing and Access to Justice Best Practices Project. The project report states: “E-filing projects should, from day one, plan for and include the self-represented as a core constituency.” But the report cautions: “While moving to mandatory e-filing for the represented on a speedy basis is appropriate, moving to mandatory e-filing for the self-represented should await a sign-off process that ensures full accessibility for all.” (*Principles and Best Practices for Access-Friendly Court Electronic Filing* (Legal Services Corporation, 2013), at page 31.)

***Issue of mixed cases if self-represented parties are excluded.***

Assuming that the rules that are adopted this year exclude self-represented parties from mandatory e-filing requirements, there is a related issue whether the rules should authorize mandatory e-filing in mixed cases in which both attorneys and self-represented parties are involved. (See proposed rule 2.253(b)(3).) If mandatory e-filing were limited to only those cases in which *all* parties were represented by attorneys, it might significantly limit the impact of mandatory e-filing.

To address this matter, the committees recommend including in rule 2.253 a provision that authorizes mandatory electronic filing and service for attorneys in civil cases that also involve self-represented litigants, but also specifies that the electronic filing and service requirements apply only to the represented parties in these cases. Self-represented parties in mixed cases would file and serve documents and would be served by conventional means unless they affirmatively agree otherwise. (See amended rule 2.253(b)(3).) Commentators either supported or did not object to this proposal. (See comments 41 and 45.) The committees recommend that

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<sup>16</sup> See [www.courts.ca.gov/documents/jc-20120831-itemA.pdf](http://www.courts.ca.gov/documents/jc-20120831-itemA.pdf).



the proposed provision about mixed cases be included in the final version of amended rule 2.253(b)(3). Including it will enhance the benefits of e-filing while appropriately protecting self-represented parties.

***Procedures for “opting out” based on hardship.***

The rules on mandatory electronic filing and service that were circulated for comment included a provision relating to requests for a hardship exception.<sup>17</sup> The proposed provision in amended rule 2.253(b)(4) states:

A party that is required to file documents electronically must be excused from the requirements if the party can show hardship or significant prejudice. A court requiring the electronic filing of documents must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.

A few observations should be made about this. First, this new provision—or something like it—is required by AB 2073. Even if self-represented persons are exempt from mandatory e-filing, the electronic filing statute requires that a hardship exception “not limited to . . . unrepresented parties” be included in the rules. (Code Civ. Proc., § 1010.6(d)(1)(C) and (g)(2).)

Second, the circulated version of the rule provides minimal guidance on the procedures for requesting a hardship exemption. Basically, rule just tracks the statutory requirements for providing a hardship exception. As discussed previously, the committees recommend that self-represented parties be exempt from mandatory electronic filing and service. If so, this significantly affects the procedures required for seeking to “opt out” from mandatory electronic filing and service: they would apply only to *represented* parties. In that case, the rules on requesting exemptions do not need to be so detailed; the simple version of rule 2.253(b)(4) on “opt out” procedures that was circulated for comment is likely to be sufficient.

To obtain public comments on the issues raised by the hardship/opt out procedures, the invitation to comment posed five specific questions.<sup>18</sup> Comments were received on all these questions. (See comments 136–198.)

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<sup>17</sup> Compare the procedures already in current rule 2.253(a) for complex cases and rule 8.73 for appellate cases.

<sup>18</sup> The five questions asked were:

- Should the rules on requests for exemptions contain more detailed procedures—for example, specifying whether the request for an exemption may be made *ex parte* or on shortened time, whether it may be decided without a hearing, whether the request must be decided expeditiously within a certain period of time or deemed granted, and whether, if there is a delay in deciding the request, the documents are deemed filed as of the time they were originally presented to the court?
- Should the rules specify to whom a request for exemption shall be made (e.g., the presiding judge or the presiding judges’ designee) or require that the local rules adopted on e-filing must specify to whom the request for a hardship exemption is to be made?

*1. More detailed procedures.*

On the issue of whether there should be more detailed procedures for requesting an exemption and for filing documents by conventional means, there were three principal responses: (1) some commentators thought there should be more detailed procedures, (2) some commentators thought the procedures should be left to local rules, and (3) a commentator thought it is too soon to make specific recommendations. (See comments 136–146.)

Among those who thought that there should be more detailed procedures for requesting hardship exemptions, the most common recommendation was for the rules to provide for procedures permitting applications for exemptions to be made without a hearing—similar to the fee waiver request process. (See comments 137, 139, 140, and 143.) Thus, the Los Angeles Center for Law and Poverty suggested the following specific procedures for requesting hardship exemptions:

- The proposed form EFS-007 can be submitted ex-parte without a hearing, by parties with attorneys requesting hardship exemption or by low-income or self-represented litigants who have previously opted in to e-filing and/or e-service. However, a hearing may be held if a judicial officer requires additional information.
- Form EFS-007 should not be required for low-income and self-represented litigants who file hard copy documents in the clerk’s office (meaning the litigant is exempted and does not need to file a document to opt-out).
- Like a fee waiver request, the matter should be decided expeditiously within a certain time (10 days) or deemed granted.
- If ultimately granted, the documents should be deemed filed as of the date they were originally presented to the court.
- If denied, the litigant should be able to request a hearing set within a reasonable time;
- If the litigant attempted to file in hard copy concurrent with a request for exemption, no default should be taken against the litigant.
- Further, if the rules require “opt-out” rather than “opt-in,” self-represented parties should be exempted from the requirement for the first year to afford time for widespread outreach and education, with self-represented parties being encouraged to participate in e-filing for that first year.

(See comment 140.)

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- Should a party be able to request exemption from electronic service and other relief, as well as exemption from mandatory e-filing requirements?
  - Should the same procedures that are used for hardship requests generally also apply to self-represented persons? Or should something even simpler—such as filing a standardized request to be excused from e-filing to be presented with the initial papers to be filed—be all that is required for self-represented litigants?
  - Should the clerk’s office be able to grant such requests and no appearance or hearing be required unless the request is denied?

The Superior Court of Orange County also thought that some statewide guidelines or procedures would be useful. It specifically recommended that:

- The request for exemption can be submitted ex parte.
- A hearing is not required on the request, unless the judicial officer requires additional information.
- The court can grant the clerk's office the authority to grant the request if the party meets certain basic criteria (e.g., there is a previous granted fee waiver on file, the party is submitting a fee waiver application and indicates receipt of government assistance or income below the poverty level, or the party does not have access to a computer).
- Documents submitted with the request should be filed the day of the application is received to preclude missing statutory deadlines or defaults.

(See comment 143.)

The IOLTA-Funded California Disability Advocacy Organizations stated that, if the rules provide for an opt-out process, the process must be:

- Compliant with federal and state disability civil rights law requirements.
- Coordinated and aligned with the existing provision of rule 1.100.
- Clearly and sufficiently detailed as to all aspects of the process (including eligibility requirements; timelines and mechanisms for submitting requests and issuance of decisions; identification of initial screeners authorized to rule on exemption requests; and identification of oversight process for review of initial decisions).
- Clearly memorialized, widely distributed and easily available in multiple accessible formats relevant to people with disabilities.

(See comments 9 and 83; Attachment B, page 11.)

Other commentators mentioned additional procedural features that should be included in the statewide rules. The Santa Clara Superior Court commented that the timing for submitting and processing requests should be consistent, as well as the forms used by applicants. (Comment 146.) A majority of the members of the State Bar of California's Committee on Administration of Justice (CAJ) thought that the application procedures should be part of the statewide uniform rules. CAJ expressed particular concern about the failure of the rules to address compliance with the mandatory service and filing requirements during the time between the filing of a request and the time that a ruling on that request for an exemption, and it recommended the adoption of a stopgap mechanism to address this problem. (Comment 141.)

Four commentators did not support statewide rules providing more detailed procedures or guidelines; instead they recommended leaving the application process to local rules. (See

comments 138, 142, 144, and 145.) One commentator thought that it was premature to recommend more detailed procedures. (See comment 137.)

The committees considered these comments. Assuming self-represented parties are exempted entirely from mandatory electronic filing and service for the reasons stated previously, the committees do not recommend the adoption of more detailed statewide rules on the procedures for “opting out” at this time. Amended rule 2.253(b)(4) appears sufficient to address the situation of *represented* parties that need ask to be excused from e-filing. The particular procedures to be used to “opt out” may be left to courts to determine locally consistent with the law.<sup>19</sup> Courts instituting mandatory e-filing should consider the public comments about the more detailed procedures in adopting their local procedures. In the future, based on local experiences, advisory committees could further develop the statewide rules on the procedures for “opting out” of mandatory electronic filing if that appears necessary or desirable.

### *2. Specification to whom the hardship request should be made.*

The invitation to comment asked for specific comments on whether the rules of court should specify to whom a request for a hardship exemption shall be made or should require local rules to specify to whom the request shall be made. Eleven comments were received on this particular question. (See comments 147–157.) Half of the commentators indicated that this matter should be left to local rules. Those who thought that the specification was needed generally indicated that the request, at least in the first instance, should be made to the clerk’s office, which would have the ability to grant requests. A few commentators also reiterated their position that self-represented litigants should be excluded entirely from mandatory e-filing and e-service and, if so, would not need to make requests.

The committees, which support exempting self-represented parties altogether, do not think that the proposed rules on mandatory e-filing need to be modified to expressly address to whom requests for exemptions must be made.

### *3. Exemption from mandatory electronic service.*

Comments were specifically invited on whether a party should be able to request exemption from electronic service. Thirteen comments were received on this question. (See comments 158–170.) Most supported some sort of exemption.

A number of commentators recommended that self-represented litigants should be excluded entirely from mandatory e-service just like mandatory e-filing. For example, one stated that “self-represented parties should be automatically exempted from mandatory e-filing and receipt of e-service, but allowed to opt in”; it commented further that “tying e-filing and e-service together will greatly increase the requests for exemptions.” (Comment 162.) Another stated that

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<sup>19</sup> As commentators noted, local rules providing opt-out procedures would need to be consistent not only with Code of Civil Procedure section 1010.6(d)(1)(C) and (g)(2) and rule 2.253(b)(4) but also with the statutes and rules on accommodations for persons with disabilities.

“the automatic inclusion of e-service would be a hardship for those parties who do not have regular access to internet-capable electronic devices.” (Comment 163.)

Some of these commentators indicated that the burden of mandatory e-service and electronic receipt of service may be even higher for self-represented litigants than e-filing. “Low-income and self-represented litigants who were able to access assistance with document preparation through a self-help center or legal services agency may be able to receive one-time assistance in e-filing, but no one provider can assist litigants with free, daily access to electronic devices with internet and scanner or PDF conversion software. Thus, even if parties must e-file or can opt in to do so, they should be able to request exemption from mandatory receipt of e-service.” (Comment 163.)

The Superior Court of Orange County, which had objected to excluding self-represented litigants entirely from mandatory electronic filing and service, takes the position that parties should be able to request exemptions from both electronic filing and service—or from either separately. Recognizing that parties who may be assisted to file documents electronically by legal aid organizations or self-help centers may not have the ability to serve or receive service of documents electronically, the court states that a procedure must be in place to excuse self-represented litigants from e-service even if they are able to e-file; hence, it recommends adding a new subdivision to rule 2.251 (on e-service) to provide for hardship exemption from electronic service requirements. (Comment 167.) Other commentators have similarly indicated that, if mandatory e-filing and e-service apply to self-represented parties, there should be a simple “opt out” procedure applying to e-service as well as e-filing. (Comments 164 and 165.)

Still others have taken the position that the rules should be stricter. An attorney commented that parties should be able to be exempt from electronic service only if they lack a computer with internet connections. (Comment 161.) A court commented that, if a party is bound by electronic filing, the party should also be bound by electronic service. (Comment 166.) Another court commented that the exemptions should be “all or nothing”: parties should either fully opt in or fully opt out—it would be administratively burdensome to exempt portions of the program. (Comments 170.)

The committees agreed that self-represented parties should be exempt from mandatory electronic service as well as mandatory electronic filing. Self-represented parties, however, should be able to voluntarily agree to accept electronic service by affirmatively consenting to do so. For represented parties, the proposed rules and forms on mandatory electronic filing and service should remain basically as proposed: they would allow represented parties to request to be excused from both mandatory electronic filing and service—or from either separately.

#### *4. Simplified rules for self-represented litigants to opt out.*

The invitation to comment asked whether the same procedures that are proposed to be used for hardship requests generally should also apply to self-represented persons—or whether some simplified procedures should be available for such litigants. Sixteen comments were received on

this question. (See comments 171–186.) Assuming the committees’ recommendation to exempt self-represented litigants entirely from mandatory electronic filing service is adopted, the opt-out procedures would apply only to represented parties. In that case, the question whether there should be simplified procedures for self-represented parties would not need to be addressed. (See comment 184.) On the other hand, if self-represented litigants are not exempted generally, then the issue would need to be decided. In that situation, the commentators were somewhat divided on whether special procedures for exemptions should apply.

Some thought that the hardship exemption procedures should also apply to self-represented litigants. (See, for example, comments 172, 174, 182, and 185.) The Superior Court of Santa Clara County thought this would ensure consistency. (Comment 185.) The Superior Court of Orange County commented: “The same procedures for hardship requests, developed by the individual trial courts, should continue to apply to self-represented persons. Any proposed rule should have the same essential elements as outlined above, while leaving the discretion for processing the requests in the purview of the local trial courts.” (Comment 182; see also comment 143.)

Other commentators thought that the request process for self-represented litigants should be simpler, probably using procedures similar to those used in applying for a fee waiver. (See, for example, comments 175, 179 and 180.) The Superior Court of Los Angeles County commented: “A simple request should apply to self-represented litigants. The critical criteria should be whether the litigant has access to a computer with Internet access.” (Comment 181.) The Superior Court of Riverside County commented: “Each court should be allowed to decide what it would like to do to make hardship requests easy. Again, self-represented should not be associated with hardship. These are two distinct situations.” (Comment 183.)

In the end, assuming that the Judicial Council agrees with the committees’ recommendation for a general exemption for self-represented litigants from mandatory electronic filing and service, there will be no need to develop a set of simplified procedures for self-represented parties to use to “opt out”: the exclusion will be automatic.

##### *5. Should the clerk’s office be given authority to grant requests for exemption.*

The invitation to comment solicited comments on the specific question whether the clerk’s office should be able to grant requests for exemptions and no appearance or hearing be required unless the request is denied. Twelve comments were received on this question. (See comments 187–198.)

The commentators generally supported giving the clerk’s office the authority to grant exemptions. The California Commission on Access to Justice added that: “The decision whether to allow self-represented parties to opt out of e-filing should be ministerial rather than discretionary.” (Comment 187.) The California Family Law Facilitators’ Association cautioned that “the clerk’s office should be able to grant such requests but very specific rules about who would qualify and who would not qualify would need to be developed. Otherwise each clerk

would have discretion based upon whim to determine who would be exempt and who would not be exempt.” (Comment 188).

Regarding the exemption process, a commentator remarked: “A process similar to the ones developed for fee waiver requests should be developed, with accompanying rules and forms. In those cases, the litigant receives their fee waiver and is only required to appear for a hearing in the event their request for fee waiver is denied.” (Comment 191.) Another commentator stated that “the clerk’s office should be able to grant a request for an exemption, but . . . a judicial officer should be required to consider a request before it is denied.” (Comment 192.)

Finally, a court stated: “The decision on how to process these should be left to the discretion of the trial court, but the same options provided in Gov. Code Section 68632 et seq. [on fee waivers] should be made available in this context as well. It is unlikely any court would require an appearance or hearing, but there is no need to prohibit them.” (Comment 195.) Another court stated: “The individual court should make this decision by local rule.” (Comment 194.)

In light of the committees’ recommendation that self-represented parties be exempted altogether from mandatory e-filing and service, they did not regard the question of whether clerk’s offices should be authorized to grant exemptions to be a matter that needs to be included in the statewide rules on mandatory electronic filing. Courts instituting mandatory e-filing should consider the comments on the issue in adopting their local procedures. If further experience indicates that statewide rules need to be developed on this subject, this issue might be considered by the committees in the future.

***Scope of mandatory e-filing: Types and categories of civil cases.***

The next issue considered regarding rule 2.253 is about what types and categories of cases are appropriate for mandatory e-filing. Under the rules that were circulated, the range of types of civil cases in which a court might require parties to file documents electronically was very broad. Amended rule 2.253 lists numerous kinds of civil cases that would be eligible for mandatory e-filing: each court would be left to specify the types or categories of civil actions in which parties are required to file documents electronically in that court. (See amended rule 2.253(b)(1).) The only types of civil cases that would have been excluded under the proposed rules were juvenile cases.

Comments were specifically invited on whether the proposed scope was appropriate, whether the scope should be narrowed to exclude any other types or categories of civil cases, or whether it should be expanded to authorize mandatory e-filing even in juvenile cases. A number of commentators responded to these questions. (See comments 38–39 and 102–115.) Most of the commentators supported the broad scope and flexibility of subdivision (b)(1), which leaves it to the superior courts to determine which types or categories of civil cases are subject to mandatory e-filing in those courts. However, differences of opinion arose on the issue of whether juvenile and certain other types of cases should be included.

The TCPJ/CEAC Joint Rules Committee requested that “juvenile cases not be excluded outright.” (Comments 39 and 115.) On the other hand, a legal aid organization and a State Bar committee commented that “[t]he rule should not be expanded to include juvenile cases.” (Comments 105 and 107.) The Superior Courts of Los Angeles and San Bernardino Counties also supported excluding juvenile cases. (Comments 108 and 112.)

There was also a difference of opinion as to whether small claims cases should be excluded or included. The State Bar Committee on Administration of Justice recommended that “small claims cases *not* be included in the mandatory e-filing and e-service rules,” although it recognized that there could be substantial benefit to *permitting* at least the filing of pleadings in small claims cases through electronic means. (Comment 38.) On the other hand, the Superior Court of Sacramento County recommended that small claims cases be specifically added to the types of cases for which mandatory e-filing may be mandated. (Comment 111.)<sup>20</sup>

Some commentators recommended excluding family law cases from the rules. (See comments 102, 106, and 107.) These commentators were particularly concerned because a large portion of parties in these cases are self-represented. If mandatory e-filing were to apply only to family law cases in which all parties are represented, their concern might be substantially less. The Superior Court of San Bernardino County stated: “[W]e feel the proposed scope of the rules is adequate and appropriate: including family law and excluding juvenile cases. Family Law represents a large and challenging set of cases within the trial courts and all measures which could assist in the effective and efficient resolution of these cases should be available.” (Comment 112.)

Finally, some commentators recommended excluding additional types or categories of cases besides juvenile and family law cases from the rules on mandatory e-filing and e-service. These included cases involving domestic violence restraining orders, civil harassment restraining orders, probate guardianships, probate and mental health, and unlawful detainers. (See comments 105, 106, and 107.) The commentators argued that the case for excluding types or categories of cases is particularly strong if self-represented litigants are not generally excluded from mandatory e-filing and e-service. (See comments 102 and 107.)

The committees reviewed and discussed the comments. They recommend, first, that the rules provide for a broad, flexible, and inclusive approach that would allow each court implementing mandatory e-filing and e-service to determine the specific types of civil cases for which to mandatory electronic filing and service would be appropriate in that court. To that end, the proposed definition of “civil case” that was circulated—that would have excluded juvenile cases from the definition of “civil”—would be eliminated. Thus, courts would be authorized to institute mandatory e-filing and service for any type of civil case, including juvenile dependency cases, for which the court determines that mandatory e-filing is appropriate.

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<sup>20</sup> If the mandatory e-filing rules that are adopted exempt self-represented parties, mandatory e-filing would not be permissible in small claims cases because all parties in these cases are self-represented.



At the same time, as a prudential matter, the committees recommend that an Advisory Committee Comment be added to rule 2.253 noting that, 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 involve 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.

The committees noted that many of the commentators' arguments for excluding specific case types—such as family law and other cases mentioned above—were substantially based on concerns that self-represented parties would have difficulty in implementing e-filing and e-service in these types of cases. But because self-represented parties would be exempt entirely under the committees' recommendations and only represented parties would be required to file and serve documents electronically, these concerns should largely be eliminated. In addition, as a practical matter, courts are unlikely to be instituting mandatory e-filing in these more challenging types of cases until after they have acquired experience with more conventional types of civil cases. Even if a court eventually includes such cases in mandatory e-filing, electronic filing would apply only where parties are represented; and, in those situations, attorneys would have an opportunity to request to be excused from mandatory e-filing on a showing of undue hardship or significant prejudice. (See Code Civ. Proc., § 1010.6(d)(1)(C) and rule 2.253(b)(4).)

#### ***Fees and fee waivers.***

The rule on mandatory electronic filing includes paragraphs on fees and fee waivers. (See rule 2.253(b)(5)–(6).) Comments were invited from the public and the courts about the fee and fee waiver provisions—and specifically whether any other provisions should be added. Fifteen comments were received on these matters. (See comments 226–240.)

Several legal aid organizations agreed with including the language in proposed rule 2.253(b) permitting courts to charge only actual costs and requiring reasonable fees to be charged by electronic filing service providers. (See comments 229, 230, 232, 233 and 240.) Other legal aid organizations expressed similar views. One also expressed a concern that there were no proposed provisions concerning the review, judicial or otherwise, to determine reasonability; it suggested that rules should be developed regarding fees charged by EFSPs. It stated: “Fees charged by EFSPs may be prohibitive to many of the underserved, especially if e-filing is made opt-out rather than opt-in.” (Comment 231.) Another legal aid organization was concerned that, without guidelines, e-filing fees might increase, effectively barring the door for many low-income litigants. The California Commission on Access to Justice commented: “The process for handling fee waivers is not outlined in detail and may require further study.” (Comment 226.)

On the other hand, most trial courts thought the proposed rules on fees of fee waivers were sufficient; they did not think that any more rules were needed. (See comments 235, 236, 238, and 239.) To the extent rules were needed, the courts thought that they could be developed locally. (See comments 236 and 237.)

The committees recommend the adoption of the provisions on fees and fee waivers that were circulated. If experience shows that additional, more detailed rules or guidelines about these matters are needed, they can be developed in the future.

***Effective date of electronic filing: Determined by “close of business” or midnight on filing day.***

An important issue that needs to be addressed in the rules is what should be the effective date of mandatorily e-filed documents. As previously indicated, there are two different and inconsistent provisions on this question in the statute on electronic filing: a general provision for documents that are filed electronically by consent of the parties or by court order and a different one for documents that are filed under the Superior Court of Orange County’s mandatory electronic filing pilot project. AB 2073 leaves open the issue of what standard should be adopted for mandatory e-filing under the new uniform statewide rules but keeps in place the current standard—that is, an electronic filing is effective on the next court day if filed after the “close of business”—for cases where e-filing is by consent or by court order.

The invitation to comment observed that, in the long-term, a single standard for all types of electronic filing, whether voluntary or mandatory, seems best. But at this time, the question that must be resolved is: what standard should be recommended for mandatory electronic filing under the new rules? The invitation presented three options: (1) adopt the “close of business” standard for all electronically filed cases; (2) allow same-day filing until midnight in mandatory e-filing cases; or (3) make filing effective at the time of transmission. For the purposes of discussion and public comment, the rules that were circulated provided for all three options described above—the “close of business,” the “file until midnight,” and the “time of transmission” approaches. The proposed rules also provided for the option that, if either the “file until midnight” or the “time of transmission” approach were recommended, its adoption might be postponed until conforming legislation can be enacted. Comments were specifically invited on the issues relating to when electronic filings under the mandatory e-filing rules should be effective.<sup>21</sup>

Forty-two comments were received on these issues. (See comments 53–59 and 241–276.) The commentators divided on the question of the effective time of filing. A majority favored adopting the “close of business” standard for mandatory e-filing as well as for voluntary e-filing.

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<sup>21</sup> Specifically, the Invitation to Comment asked:

- How should the effective time of electronic filing and service be determined?
- Should the “close of business,” the “file until midnight,” or the “time of transmission” standard—or some other standard—be adopted for determining the effective date of electronic filings?
- Regardless of what standard is adopted, should the standard be uniform for voluntary and mandatory e-filing?
- If the “file until midnight” standard is to be adopted, should it be made applicable to mandatory e-filing on July 1, 2013 or should it be postponed until legislation is enacted making this standard applicable to both voluntary and mandatory e-filing?

A minority supported the “file until midnight” standard. Only one commentator expressed support for the “time of transmission” standard.

Several legal aid organizations supported the “close of business” standard. (See comments 248, 252, and 253.) “This is to ensure fairness to those who do not have the resources to e-file and must do so before the close of business and not give an unfair advantage to those who do have the resources to e-file and may do so before midnight.” (Comment 252.) One legal aid organization supported the “file until midnight” standard. It explained that this standard would create greater access for clients who come in after the close of business, as well as to evening clinics, to be able to e-file their documents—which is particularly important for litigants who need to file answers in unlawful detainer cases. (Comment 251.) Another legal aid organization stated that e-filing should be effective on transmission. It stated: “This is important to ensure that documents are considered to be timely filed in the event of delays by either the e-filing vendor or the court clerks.” (Comment 53.) Finally, one aid organization suggested postponing the adoption of the standard until more information is available from the implementation of the Orange County pilot project. (Comment 268.)

The majority of the trial courts submitting comments supported the “close of business” standard. (See comments 56, 57, 255, 258, and 259.) The Superior Court of Los Angeles County, in support of the “close of business” standard, commented that “adopting this standard would provide for a consistent standard for all filings regardless of the process by which they are received.” (Comment 255.) The Superior Court of San Diego County commented that, “[w]ith the severe staffing shortages, allowing filing until midnight would backlog items for processing by court staff the next business day and this would make it more difficult to process emergency requests in a timely manner. It would also create inconsistency in the code related to when documents must be filed, which would be unmanageable for court personnel. Our court also believes that this makes it fair for all litigants because some, like self-represented parties, may not have access to e-filing, which would put them on an unequal playing field.” (Comment 258.) The Santa Clara County Superior Court supported the “close of business” standard because it “provides equal access to justice and ensures consistency at a specific court without imposing a particular time on all courts.” (Comment 259.)

Two courts supported the “file until midnight” standard. The Superior Court of Orange County stated: “There should be a uniform statewide rule permitting the ‘file until midnight’ option....This will be a significant benefit to the attorneys who will have more time to draft their pleadings, and very little hardship to the local courts.” (Comment 246.) The Superior Court of Riverside County stated: “File until midnight has most appeal because all courts across the state do not close at the same time. This is also a tangible benefit of e-filing for the filers but may put a burden on the court.” (Comment 257.)

Attorney organizations were divided on the issue of timing, although their members tended to favor the midnight filing standard. (See comments 54, 55, and 254.) Approximately two-thirds of the State Bar’s Committee on the Administration of Justice (CAJ) favored the “file until

midnight” standard, with a minority supporting the “close of business” standard. The CAJ majority believed that a midnight deadline will “increase access to the courts, decrease confusion among litigants, and advance the goal of encouraging e-filing.” The CAJ minority believed that the “close of business” standard “provides an even playing field, in which all litigants will have the same filing time, and no one would have the advantage of additional hours in which to prepare and file pleadings.” (Comment 54.) The State Bar’s Litigation Section favored the midnight standard stating that it is “practical, consistent with e-filing rules in California appellate courts and in federal courts, and avoids uncertainties caused by inconsistent and changing closing times of filing windows.” (Comments 55.) Finally, the State Bar’s Standing Committee on the Delivery of Legal Services (SCDLS) reached no consensus on the timing issue. SCDLS saw benefits and drawbacks to both approaches. However, no member of SCDLS was in favor of the “close of business standard” as currently defined in Code of Civil Procedure section 1010.6(b)(3) because it allows for wide variations of filing times—which continue to change—dependent on different courts and different days of the week. (Comment 254.)

Other entities submitted comments on the issue of the effective time of filings. The California Judges Association supported the “close of business” standard. (Comment 269.) The Task Force on Self-Represented Litigants also recommended retaining the “close of business” rule stating: “Allowing until midnight for electronic filers would be unfair to the other side that is not e-filing or does not have access to a computer after work hours.” (Comment 58.) Likewise, the TCPJ/CEAC Joint Rules Committee recommended that “the effective time be the same time as required by the court for any other method of filing.” (Comment 59.)

Two individuals submitted comments supporting the current “close of business” standard. An EFSP and publisher stated “midnight filings in electronic filings can and will cause general confusion amongst the entire filing population. . . . If for example, a county has required electronic filing for all civil cases, optional electronic filing for Probate, and no electronic filing for Family Law cases, how do you expect a law firm staff to deal with two different filing times each day?” (Comment 242.) Another legal publisher commented that “[e]xtending the deadline to midnight cannot be necessary, and I cannot see how it could benefit anyone, particularly the attorneys and staff force to work so late.” Although this commentator opposed the “file until midnight” standard, she also thought that the current “close of business” standard should be changed to provide for a uniform 5:00 p.m. deadline for electronic filing and service. (Comment 250.)<sup>22</sup>

The invitation to comment specifically asked questions about uniformity and, if the “close of business” standard is not retained, about the timing of introducing any alternative standard. The commentators generally supported the adoption of a uniform standard for both voluntary and

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<sup>22</sup> A legal aid organization also recommended the adoption of a standard 5:00 p.m. deadline for electronic filings. (See comment 253.) Adopting this standard would require a legislative change because “close of business” is defined in the statute to mean “5 p.m. *or the time at which the court would not accept filing at the court’s counter, whichever is earlier.*” (Code Civ. Proc., §1010.6(b)(3)(emphasis added).)

mandatory e-filing. (See comments 260–267.) The California Judges Association pointed out that one advantage of adopting the close of business standard is that it avoids the problems that would otherwise arise if the “file until midnight” approach is pursued. (Comment 269.) If the current “close of business” approach in Code of Civil Procedure section 1010.6(b)(3) and rule 2.259(c) were retained and made applicable by rule to all types of electronic filings, it would be fairly simple to provide in the uniform rules on mandatory electronic filing that this “close of business” standard applies to all electronically filed cases.<sup>23</sup> On the other hand, if an alternative standard is preferred, the process for implementing that approach would be more complicated. The “file until midnight” standard could be made applicable by rule to all mandatory electronic filing, but to make the “file until midnight” standard applicable to cases involving voluntary e-filing would require legislation.

The committees considered the comments. They recognized that courts, legal aid groups, and bar organizations are divided and that their members have varying positions on the question of the effective timing of electronic filings. The committees concluded that more experience and information would be beneficial. Hence, they recommend that the rules of court on mandatory electronic filing provide for the “close of business” standard but allow individual courts the option of adopting instead the “file until midnight” standard by local rule. Proposed rules 2.253(b)(7) and 2.259(c) have been revised to allow for this option. The committees also recommend that courts that establish mandatory e-filing programs be required to report to the Judicial Council on their experiences, including their experiences with different effective times of filing. These reports will provide a basis for evaluating different practices and procedures and for making future recommendations about electronic filing and service.

### ***Electronic service.***

AB 2073 requires the Judicial Council to “adopt uniform rules to permit the mandatory filing *and service* of documents for specified civil actions in the trial courts of the state.” (See Assem. Bill 2073 [amended Code Civ. Proc., § 1010.6(f)](italics added).) Thus, the proposal includes rule changes relating to the electronic service as well as the electronic filing of documents. (See amended rule 2.251.) Clarification of the rules on electronic service is especially important for self-represented litigants but affects everyone who serves documents electronically.

Although the commentators did not object specifically to the proposed new provisions in the rules about electronic service, several legal aid organizations raised related issues and made suggestions concerning electronic service, particularly as it applies to self-represented litigants. (See comments 60–63.) Some commentators indicated that it would be useful to permit self-represented persons to get assistance in electronically filing documents without that constituting

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<sup>23</sup> As mentioned above, some commentators have suggested that even if this standard were to be adopted, there may be good reasons to revise the current version “close of business” standard. The standard as presently defined in the statute and rules is subject to wide actual variation because of the different times when courts’ filing counters close. However, if the “close of business” standard is going to be changed (for example, to a standard time of 4 p.m. or 5 p.m.), such a change would require legislation as well as rule amendments.

consent to electronic service. “Self-represented litigants who choose to e-file should not be required to accept future service by email.” (Comment 63.) Other commentators stated: “[E]-filing and e-service should be separate and distinct processes, and self-represented litigants should be exempt from both, but be allowed to opt-in to one or the other.” (Comment 61.) “[T]he ability of a self-represented litigant to use e-filing may not be consistent throughout a case. A litigant may be able to accomplish e-filing at one point in the case, and not at another. A self-represented litigant would then need a process by which to ‘opt out’ even after initially e-filing.” (Comment 63.) To implement these ideas, the commentators suggested that separate procedures and forms be available for electronic filing and service. (See comments 60–63.)

The committees agreed with the commentators that it is important to distinguish between electronic filing and electronic service. Specifically, the rules should enable self-represented parties to get assistance with electronically filing documents without such filing necessarily requiring the self-represented parties to serve and be served electronically. Such provisions would help not only the self-represented parties to file electronically but also the courts to receive more filings electronically. These provisions would also protect self-represented parties who cannot serve documents electronically (for example, because they do not have a computer) or do not want to receive such service because of the nature of the case (for example, in a proceeding involving violence, harassment or abuse).

The proposed rules on mandatory electronic service already recognized the distinction between filing and service, to a significant extent. For example, amended rule 2.251(c) states that, as a general rule, a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties. However, the rule also provides for an exception: new subparagraphs (c)(2)(A) and (B) provide that this general rule does not apply if the court orders otherwise or if “[t]he action includes parties that are not required to file or serve documents electronically, including self-represented parties.” The provision continues: “those parties are to be served by non-electronic methods unless they affirmatively consent to electronic service.” The committees have added “affirmatively” before consent to clarify this further.

The rules as circulated, however, did not include similar provisions in rule 2.251(b) on service by consent, which currently states that a party indicates that it agrees to accept electronic service by “[e]lectronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service by the court at the electronic service address the party furnished under rule 2.256(a)(4).” (See current rule 2.251(a)(2); proposed amended rule 2.251(b).) This means, in effect, that if a self-represented party voluntarily files a document in a case, perhaps with the assistance of a self-help center or legal aid organization, the party is agreeing to accept electronic service in that case. Based on the comments, the committees recommend that the rule provision that presumes that electronic filing constitutes consent to electronic service be modified to state that the provision does not apply to self-represented parties. Specifically, they recommend that rule 2.251 be amended to include a statement that the provision that a party consents to electronic service by electronically filing a document “does not

apply to self-represented parties; they must affirmatively consent to electronic service....” (See amended rule 2.251(b)(1)(B).)

Regarding forms, the committees note that a form already exists for the purpose of enabling parties to affirmatively consent to electronic service. (See *Consent to Electronic Service and Notice of Electronic Service Address* (form EFS-005). They also note that the *Substitution of Attorney— Civil* (form MC-050) can be used, in cases where there has been limited scope representation, for a party to indicate that it has become self-represented and to provide the party’s physical address for service by mail. Based on experience, forms can be revised or added in the future if that is necessary for self-represented parties to be able to opt in and out of electronic service.

### **Comments on other rule changes**

#### ***Filing through EFSPs or directly with the court (rule 2.252(b)).***

The current e-filing rules and statute are not as clear as they should be that electronic filing can be done through an electronic filing service provider (EFSP) or directly into the court, if the court provides that capacity. To effectuate this purpose, under the proposal that was circulated, rule 2.252 would be renamed “General rules on electronic filing of documents,” and a new subdivision (b), “Direct and indirect electronic filing,” would be added to the rule. The new subdivision states that, except as otherwise provided by law, a court may provide for the electronic filing of documents directly through the court, through one or more approved electronic service providers, or through a combination of direct and indirect means.

The State Bar’s Litigation Section recommended modifying the text of proposed rule 2.252(b) to read:

“Except as otherwise provided by law, a court may provide for the electronic filing of documents directly ~~through~~ with the court, indirectly through one or more approved electronic filing service providers, or . . . .”

(See comment 65.) The Litigation Section also suggested that the reference in rule 2.252(b) to electronic filing through “a combination of direct and indirect means” was unclear. It suggested that this phrase be modified to state more clearly what is meant.

The committees agreed that the text of rule 2.252(b) should be modified and have made the changes suggested. However, the phrase “a combination of direct and indirect means” seems clear enough and has been left unchanged.

#### ***Number of EFSPs (rule 2.253(b)).***

The invitation to comment proposed amending rule 2.253, the main rule on mandatory electronic filing, to state in new subdivision (b) that “[a] court may require parties by local rule to electronically file documents in civil actions directly through the court, or directly through the

court and through one or more approved electronic service providers, or through more than one approved electronic service provider.”<sup>24</sup>

A commentator stated: “We note that the legislation requires that TWO OR MORE EFSP’s be available to accept electronic filing for the court. It also appears that the court itself could be an EFSP and would therefore be counted as well. However, the rule as proposed does not reflect the ‘two or more’ requirement. It should.” (Comment 35.) The committees did not think that the text of rule 2.253(b) needs to be changed. The commentator appears to have misconstrued the language of AB 2073. Under that bill, electronic filing is subject to certain conditions, including “The court and all parties shall have access either to *more than one* electronic filing service provider capable of electronically filing documents with the court, or to electronic filing access directly through the court . . .” (Code Civ. Proc., §1010.6(d)(1)(B)(italics added); see also Code Civ. Proc., §1010.6(g)(2).) Thus, the proposed rule language is accurate and the reference to “two or more EFSPs” is not required.

The committees did think, however, that the statutory provisions on the required number of vendors may warrant review and reconsideration in the future. The statutory language is not as clear as it might be. Also, members were concerned that some courts—especially smaller courts—might not be able to obtain more than one electronic filing service provider or to provide services directly. Thus, they might be precluded under the statute from instituting mandatory electronic filing in ordinary civil cases.

***Notification of EFSPs (rule 2.256(a)(6)).***

Parties filing and serving documents through electronic filing service providers sometimes fail to notify the EFSPs of changes in their contact information. This problem arises particularly often with self-represented litigants who use an EFSP (including legal aid organizations that perform this service) to file electronically on a one-time basis, but after initially filing electronically fail to keep the EFSP informed about how to contact them. To address this problem, rule 2.256 would be amended to add a new paragraph (a)(6) stating that the electronic filer must:

If the electronic filer uses an electronic filing service provider, provide the electronic filing service provider with the electronic address at which the filer is to be sent all documents and immediately notify the electronic filing service provider of any change in that address.

One comment was received on this new provision. Legal Service of Northern California (LSNC) stated: “LSNC believes there should be an addition to proposed rule 2.256(a)(6) about the requirement to report changes in email addresses. The rule should require courts to provide pro

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<sup>24</sup> Based on the previous comment on rule 2.252(b) (comment 65) and the response, similar changes have been made to rule 2.253(b)—namely, the word “through” has been replaced by “with” and the word “filing” has been placed after “electronic” and before “service provider” each time the term is used.



per litigants with information about when changes need to be reported and how that change can be reported. Pro per e-filers need to be informed of the requirement and how to change an email address in writing. Including the requirement to report email address changes in court rules is insufficient because pro per litigants are not informed about the existence of the court rules.” (Comment 66.)

The committees think that the proposed provision about notification should be included in rule 2.253(b)(6) but not that it is necessary to add a specific requirement that courts provide information to self-represented persons that they must notify EFSPs of changes in their addresses and how to do so. Courts are not the only source of this information. The information can be provided to self-represented parties by various entities (including EFSPs, legal aid organizations, and self-help centers) and in a variety of ways (including notices, information sheets, website information, and in person). Thus, it seems best to provide for flexibility regarding how the information about the requirement to notify EFPS about changes in a party’s address is to be given to self-represented parties.

***Filing in paper form.***

Current rule 2.253(c) provides: “When it is not feasible for a party to convert a document to electronic form by scanning, imaging, or another means, a court may allow that party to . . . file the document in paper form.” Because of its present location, this subdivision appears to apply only to documents filed by court order in complex civil cases. However, this provision should apply to all electronic filings; hence, in the amended rules, it has been relocated to rule 2.252, “General rules on electronic filing of documents,” as subdivision (d), “Filing in paper form.”

There were no comments on the proposed relocation of the rule provision. The committees recommend that the rule be relocated as proposed.

***Paper courtesy copies.***

A court recommended that the rules provide that courts may require paper courtesy copies be provided in any proceedings that are going to be held within one day of the electronic filing because, depending on the press of business, an electronic filing might take that long to be processed and available on the court’s case management system. (Comment 92.) The committees do not recommend adding a specific provision on courtesy copies to the rules at this time. The committees may consider in the future whether this proposal, or something like it on courtesy copies, should be included in the rules.

***“Electronic filing.”***

When the present rules proposal was being developed, an issue that appeared to warrant clarification was the definition of “electronic filing” in rule 2.250(b)(7). It is currently defined as “the electronic transmission to a court of a document in electronic form.” To distinguish this definition from other meanings of “filing,” the circulated proposal recommended adding: “For the purposes of this chapter, this definition concerns the activity of filing and does not include the processing and review of the document and its entry into the court records, which are

necessary for a document to be officially filed.” Similar clarifications would be added to rules 2.253(b)(7) and 2.259(c). These additions to the rules make the meaning of the term “electronic filing” clearer when it is used throughout the chapter.

This proposal received extensive comments from the Press Group.<sup>25</sup> (See comments 18 and 64, and attachment D to the comment chart.) The Press Group’s remarks state: “The proposed rule changes include an ostensibly minor revision that could be used to work a fundamental change in access to court records—a change not contemplated or authorized by Assembly Bill 2073. Namely, the proposed rules would create a new category of court records: those that have been ‘officially filed,’ as opposed to ‘filed’ for all other purposes.”

The comment continues: “At best, the proposed changes are confusing without serving any meaningful function. However, based on past statements by court administrators, it appears the true purpose of introducing the concept of an ‘officially filed’ document into the Rules of Court is to provide administrators with justification for denying public access to records that have been ‘filed,’ under the long-understood meaning of that term, until *after* they have been ‘*officially filed,*’ an event that, under the proposed rules, would not occur until after ‘the processing and review of the document’ by court staff, whenever that might be. Proposed Rule 2.250(b)(7) (emph. added).”

“The proposed rule changes would thus give court administrators unbridled discretion to delay press and public access to fundamentally public records until administrators decide such access is appropriate—even if it is days or weeks after the “filed’ date.” (Comment chart, Attachment D, page 1.)

Thus, the Press Group objects to the specific proposed rule changes on the grounds that they are supposedly intended to delay access to court records. It also objects to the adoption of the mandatory e-filing rules on the grounds that these rules should not be adopted until the Orange County pilot project has been completed. (Comment chart, Attachment D, page 2.)

The comments are based on a misunderstanding of the purposes and processes of mandatory electronic filing, and of electronic filing as a whole. Due to the severe fiscal restraints on the courts, clerks’ offices are encountering difficulties and delays in processing paper filings. As a result, some members of the Press Group may be encountering difficulties in getting quick access to filed documents. This is doubtless the source of the frustrations expressed in the Press Group’s comments. Yet far from being a means to delay access, electronic filing will enable courts to process filings more quickly and thus make them more accessible.

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<sup>25</sup> The Press Group consists of the California Newspaper Publishers Association, the First Amendment Coalition, California Aware, and Courthouse News Service. Three additional organizations have joined in the comments by the Press Groups: Bay Area News Group, The Press Democratic Media Company, and Los Angeles Times Communications, LLC.

Even in the best of times, it takes time for the clerks to review papers presented for filing—to determine, for example if fees have been paid or the papers contain any sealed or statutorily confidential information that requires special processing. Although the courts would generally prefer, if possible, to be able to file complaints on the same day that they are submitted and make the filed complaints available to the public, to do so is sometimes simply not possible—especially in the current drastic fiscal circumstances under which courts have been compelled to lay off employees, close courtrooms, and cutback on services. But with the introduction of e-filing and its expansion under mandatory e-filing, courts will be able to more quickly process case filings—and thereby make them available sooner to the public.

The Press Group’s comments are also inconsistent with the law on court records. A “court record” is defined under California law as a record that has been *filed*—i.e., put in a file or its equivalent.<sup>26</sup> Also, the law provides that electronic court records shall be made *reasonably* accessible to the public.<sup>27</sup> The law, however, does not require courts to provide immediate public access to all documents as soon as they are received by the court, even though they have not yet been filed—i.e., not yet become court records. California law recognizes that documents may sometimes not be filed until a day or more after they are received by the court and, to protect filers, provides for this contingency by prescribing that the date of receipt shall be deemed the date of filing. (See rule 1.20(a): “Unless otherwise provided, a document is deemed filed on the date it is received by the court clerk.”)

Like rule 1.20(a), the proposed clarification of the definition of “electronic filing” in this rule proposal is intended to protect the rights of filers—in this case electronic filers. The rule changes would clarify that, for purposes of the effective date of filing, the date of receipt applies, even if the filing process is not completed until a later date. Although such a provision is likely to be of less importance in the e-filing context than the paper filing context because most electronic

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<sup>26</sup> See California Government Code section 68151(a):

“Court record” shall consist of the following:

- (1) All filed papers and documents in the case folder, but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.
- (2) Administrative records filed in an action or proceeding, depositions, transcripts, including preliminary hearing transcripts, and recordings of electronically recorded proceedings filed, lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant to law.
- (3) Other records listed under subdivision (j) of Section 68152.

<sup>27</sup> See California Government Code section 68150(l):

Unless access is otherwise restricted by law, court records created, maintained, preserved, or reproduced under subdivisions (a) and (c) shall be made *reasonably* accessible to all members of the public for viewing and duplication as the paper records would have been accessible. Unless access is otherwise restricted by law, court records maintained in electronic form shall be viewable at the court, regardless of whether they are also accessible remotely. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

(Emphasis added.)

filings will be completed quite quickly, if not instantaneously, it still has a valuable part to play in protecting the rights of litigants and should be included in the e-filing rules.

The committees concluded that adding the proposed provisions to rules 2.250(b)(7), 2.253(b)(7), and 2.259(c) would clarify the rules on electronic filing and would assist in protecting the rights of persons who file documents electronically. Hence, they recommend that these provisions be included in the amendments.

***“Time of transmission.”***

Current rule 2.251(f)(1) provides that “[e]lectronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent.” There is some ambiguity in the application of this rule. If an electronic filing service provider is used, is the “time of transmission” the time of transmission by the filer to the EFSP or the time of transmission by the EFSP to the served party? Presumably, it is the latter. The invitation to comment asked whether this issue should be clarified in the rules. One commentator agreed that the “time of transmission” should be clarified, although no specific language was proposed. (See comment 54.) The committees recommend clarifying the rule at this time.<sup>28</sup>

***Court-ordered electronic filing (rule 2.253(c)).***

Amended rule 2.253(c)(currently rule 2.253(a)) provides that a court “may, on the motion of any party or on its own motion, provided that the order would not cause undue hardship or significant prejudice to any party, order all parties in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403” to file and serve documents electronically. Two comments were received on this existing rule provision.

First, a legal aid organization commented: “Consolidated family law, domestic violence, probate and housing actions should be exempted from Rule 2.253 (c), given the extraordinary number of SRLs, and the regular (proposed) rules regarding opt-ins to e-filing and service should apply.”

(See comment 81.) Second, the Superior court of San Diego County stated: “Rule 2.253 provides in subsection (b) that a court must have at least two electronic service providers, if it does not offer e-filing directly, in order to have mandatory e-filing; however, the current version of the rule allows mandatory e-filing by court order ‘in any class action, a consolidated action, a group of actions, a coordinated action, or an action that is complex under rule 3.403...’ and there is no requirement for having two electronic service providers. Because some courts have court

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<sup>28</sup> To address this issue, rule 2.251(f)(1) [proposed amended rule 2.251(h)(1)] would be revised to include the underlined language:

Electronic service of a document is complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent. If an electronic filing service provider is used for service, the service is complete at the time that the electronic filing service provider electronically transmits the document or sends electronic notification of service.

ordered electronic filing and currently have only one provider, the rule should provide that in those cases the court can order ‘e-filing through the court directly or through an electronic service provider.’ If this were not clarified, our court would potentially need to discontinue e-filing in these court ordered cases until it gets a second electronic service provider and then restart the process once the second provider is brought on board. This would be unduly burdensome to the court and the parties in these cases since our court has found that the process of getting an electronic service provider set up with our court takes in excess of a year to complete. The cost and staffing levels required to complete such a process create significant barriers at this time due to reduced funding.” (Comment 82.)

The committees did not think that rule 2.253(c) needs to be changed; the provisions on court-ordered filing and service in complex cases have been working effectively for years. However, to address the concern of the Superior Court of San Diego County, the committees recommend adding an explanatory Advisory Committee Comment stating that court-ordered electronic filing and service under subdivision (c) are different from mandatory electronic filing and service established by local rule under subdivision (b) and Code of Civil Procedure section 1010.6: court-ordered electronic filing, unlike mandatory e-filing by local rule, does not require more than one electronic filing service provider.

***Limited scope and pro bono representation.***

A number of commentators submitted comments on limited scope representation and pro bono representation. (See comments 74–80, and 88.)

Limited scope representation. Some commentators recommended that the rules specifically recognize and provide for limited scope representation, and the fact that some represented parties will become self-represented in the course of litigation. Thus, a legal aid organization suggested that, if a represented party who has consented to e-service becomes unrepresented, the party should be exempted from e-filing and e-service, unless the party opt-ins or becomes represented again. Judicial Council forms, such as forms EFS-007 and EFS-008, and the substitution of attorney forms, should be usable for this purpose. The rules should provide for the assessment of exemptions as part of the substitution of attorney process. In the court’s order granting a substitution, the self-represented party could be directed to file an exemption request with the clerk’s office within 5 days of the order’s date. Low- and moderate-income litigants in family law should not be required to request permission to be exempt from e-filing and e-service each time they hire a limited scope attorney. The commentator also suggested that the Limited Scope Representation forms should be modified to reflect whom to serve and how to serve a party. (Comment 76.) The State Bar’s Standing Committee on the Delivery of Legal Services made similar recommendations. (Comment 79.) The Task Force on Self-Represented Litigants also made a recommendation on this issue—namely, that the e-filing rules set out a process by which a litigant who becomes self-represented during a case is automatically excluded from mandatory e-filing unless that person opts in. (Comment 80.)

As discussed above, the committees are recommending that self-represented parties be exempt entirely from electronic filing and service. If this is done, it should largely take care of most of the commentators' concerns about limited scope representation. Parties who will no longer be represented will not have to request an exemption from mandatory e-filing or e-service. To notify other parties, they can use *Substitution of Attorney–Civil* (form MC-050), which has places on the form for parties to indicate that they are self-represented and to provide the street address where they can be served. To better assist self-represented persons who will no longer be assisted by an attorney who was electronically filing and serving documents in the case, the advisory committees may, in the future, consider reviewing the substitution of attorney form and other forms to determine if they should be revised.

Pro bono representation. Commentators also recommended that parties represented pro bono and by legal service attorneys should be allowed to opt out or qualify for a waiver of the cost of filing. Without such an option, the commentators believed that the added expenses and costs may prevent or curtail pro bono attorneys' ability and willingness to represent clients. (See comments 74, 75, 77, and 78.) One commentator specifically suggested that either the court should provide a free way to e-file documents or require electronic filing service providers to allow for no-fee transmissions for litigants represented by legal service programs or pro bono attorneys working with legal services programs. (Comment 78.)

These suggestions are generally beyond the scope of the present proposal. While parties who are eligible for a fee waiver are entitled to request a waiver of their electronic filing fees under the current statute and rule, fee waivers for pro bono attorneys who are representing persons who are not eligible for fee waivers may require a change in the law.<sup>29</sup> Meanwhile, there may be some other ways to address the commentators' concerns. For example, legal aid organizations that become electronic filing service providers might be able to assist pro bono attorneys to electronically file documents free of charge. Also, courts' contracts with private EFSPs might provide some relief in this area.

#### ***Access for persons with disabilities.***

Several organizations provided specific comments about how new technological advances, including e-filing and the mandatory e-filing proposal considered here, may impact persons with disabilities. (See comments 9 and 83 (Attachment B), 84, 87, and 91.) The organizations submitting these comments often joined in support of the comments by other legal aid organizations on mandatory e-filing and service. (See comment chart, Attachment B, page 2 (also noting that "people with disabilities are...disproportionately eligible for California legal aid, and disproportionately likely to be among low-income and disadvantaged parties that

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<sup>29</sup> However, Code of Civil Procedure section 1010.6, as amended by AB 2073, may give courts some discretion in this area because the statute provides that fees charged by electronic filing service providers "shall be reasonable and shall be waived when deemed appropriate by the court, including, *but not limited to*, for any party who has received a fee waiver." (Code Civ. Proc. §1010.6((d)(1)(B)(emphasis added).)

comprise the bulk of self-represented litigants”). However, the focus of these separate comments was on disability access issues.

The commentators agreed that technological advances—including the availability of e-filing and e-service—can be beneficial to many attorneys and litigants; and technological advances can also be beneficial for people with disabilities. However, unless designed and implemented with attention to a wide range of needs, new technologies can also create new barriers to access. (See Attachment B, page 2.) Among the recommendations made by these commentators were the following:

- Need to explicitly recognize statutory disability rights mandates (Comment chart, Attachment B and comment 91)
- Need to coordinate and align e-filing rules with California Rules of Court, rule 1.100 (Comment chart, Attachment B, and comments 84 and 91)
- Need to include check boxes on forms for disability accommodations (Comment chart, Attachment B, and comment 84)
- Need to ensure confidentiality of disability-related information (Comment chart, Attachment B, and comment 84)
- Need to recognize that there are physical and policy access implications, as well as technology implications, for users who rely on shared public computers (Comment chart, Attachment B, and comment 84)
- Need to decouple e-filing and e-service (Comment chart, Attachment B)
- Strong recommendation against a mandatory “opt out” requirement, but if that is pursued, need for the procedure to satisfy various conditions (Comment chart, Attachment B)
- Need for appropriate exemptions process (Comment chart, Attachment B)
- Need for technology access advisory resources in connection with the development of the rules on mandatory e-filing and e-service, including
  - Soliciting specific public comment on disability access issues
  - Retaining and consulting experts with technical knowledge of disability access issues
  - Directing courts implementing the rules to retain and consult experts with technical knowledge of disability issues
  - Inviting participation of users with disabilities in technical system design and testing (Comment chart, Attachment B)
- Need for ongoing feedback mechanisms (Comment chart, Attachment B)
- Need to address special issues for persons with limited English proficiency (LEP), including translating materials and forms and providing bilingual staff to assist LEP litigants or access to interpretive services (Comments 87 and 89)

These comments are well-taken. As the commentators observed, the self-represented population includes many persons with disabilities, low-incomes, and limited English proficiency. Electronic filing and service may pose challenges for many of these persons.

The committees have several responses to these comments. First, they recommend that electronic filing and service not be made mandatory for self-represented persons at this time. These persons should continue to have the ability to file and serve documents by conventional means. For them, electronic filing and e-service would be strictly voluntary. Second, as some of the commentators noted, technology can be of substantial assistance to self-represented persons, including those with disabilities. Thus, self-represented parties should definitely be given the opportunity to “opt in” to e-filing and e-service to the extent that is feasible. Third, self-help centers and legal aid organizations have an important role to play in assisting disabled persons obtain access to justice, using modern technology when it can be of benefit. Fourth, courts implementing e-filing should ensure that, as e-filing is implemented and expands, it is developed in a manner that addresses the needs and situations of persons with disabilities, low-income individuals, and persons with limited English proficiency. See *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* (Judicial Council, August 2012.)

### **Comments on the New Forms for Requesting and Ruling on Exemptions**

Two new Judicial Council forms for use by persons requesting an exemption were circulated for comment:

- *Request for Exemption From Mandatory Electronic Filing and Service* (form EFS-007)
- *Order of Exemption From Mandatory Electronic Filing and Service* (form EFS-008).

Comments were specifically invited on these on what other Judicial Council forms, if any, should be adopted to implement the new mandatory e-filing legislation and rules.<sup>30</sup>

Twenty-seven comments were received on the questions about the forms. (See comments 199–225.) The commentators made specific suggestions to improve the two proposed forms, EFS-007 and EFS-008. Many of these suggestions were technical or stylistic, i.e., to clarify the caption, to strike or relocate the proof of service, and to add instructions for persons requesting exemptions. Some were more practical and substantive—for example, to add a drop-down list of reasons for requesting exemptions and to clarify that forms EFS-007 and 008 could be used to request changes in status during the pendency of an action. (See comments 137 and 204.) Commentators were divided on the question whether the forms should be mandatory or optional. (See comments 211–219.)

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<sup>30</sup> The questions asked in the Invitation to Comment about forms were:

- Are the proposed two new optional forms . . . for use in requesting an exemption from mandatory e-filing appropriate or do they need to be modified?
- Should these forms be made mandatory rather than optional?
- Are any other forms needed to implement the rules on mandatory e-filing?



In addition, the IOLTA-Funded California Disability Funded Advocacy Organization submitted comments on the forms. They stated that (1) there should be separate forms for e-filing and e-service, (2) the forms should include specific check boxes for disability accommodations, (3) the forms should be fillable, and (4) the forms should be compatible with specific access considerations enumerated in their letter. (See comment chart, Attachment B, pages 13–15.)

Finally, some commentators did not think that any additional forms besides EFS-007 and EFS-008 were necessary; others did—and provided lists of the forms that they thought should be developed. The additional forms suggested by commentators included information sheets on electronic filing and service, requests for hearings, notices of hearings, and orders after hearing. (See comments 202, 204, and 222.) A court also commented: “Trial courts should be allowed to develop additional forms they deem appropriate to implement mandatory e-filing.” (Comment 224.)

The committees thought that, if self-represented parties are exempt from mandatory e-filing, the forms for requesting exemptions and for issuing orders on the requests would not be so crucial. Nonetheless, it would still be useful to have the forms available for represented parties to use to ask to be excused from mandatory electronic filing, electronic service, or both. The forms would also be useful for courts instituting mandatory electronic filing. Thus the committees recommend approval of the two proposed forms, as optional forms. Also based on the comments, the committees recommend some specific modifications to the two proposed forms that were circulated, as discussed in the comment chart. Finally, the committees recognized that some additional forms may need to be developed in the future to implement electronic filing and service, especially for self-represented parties.

## **Comments on timing**

### ***Timing of the adoption of the rules and forms.***

The adoption of rules on mandatory electronic filing and service is required by statute; AB 2073 provides that the Judicial Council shall adopt such rules. However, the legislation is flexible as to timing; it simply requires the rules to be adopted on *or before* July 1, 2014. To realize the efficiencies and savings from mandatory e-filing, the invitation to comment indicated that an effective date of July 1, 2013 is being recommended for the rules. Comments were expressly invited on the question of timing.

A majority of the commentators supported the proposed effective date of July 1, 2013. (See comments 294, 295, 296, 297, and 298.) The Superior Court of Orange County commented: “Most courts will not be able to implement immediately, but those that are capable should be allowed to do so immediately to maximize savings and improve/maintain service to the public.” (Comment 294.) The TCPJ/CEAC Joint Rules committee stated that July 1, 2013 effective date appears to be feasible. (Comment 298.) Some commentators, however, did suggest postponing action on the rules. The Los Angeles County Superior Court stated that the “proposal goes too

far, too soon. Statewide rules, which will tie the hands of individual courts, are being implemented before the pilot projects of Orange County and other courts provide the necessary experiences and insight into the best decisions on the issue raised by this proposal. . . .We should wait until 2014 to implement any rules.” (Comment 23; see also comment 279.) The State Bar’s Litigation Section also suggested waiting until after the Orange County pilot program has been evaluated before adopting the proposed new rules. (Comment 293.) The Press Group commented that it would be precipitous to adopt mandatory e-filing rules before going through the pilot program. (Comment Chart, Attachment D, page 2.)

A legal aid organization submitted an alternative view on the issue of timing. It recommended “that the Judicial Council encourage a phasing in of mandatory e-filing throughout the state, allowing only a certain number of courts per year. This rolling out would allow courts to learn from each other and learn how to structure support for self-represented litigants who may choose to opt-in.” (Comment 36.)

The committees considered the comments and recommend that the proposed rules and forms be adopted effective July 1, 2013, as proposed. Absent the rules, only the Superior Court of Orange County is authorized to establish mandatory electronic filing in civil cases. The prompt adoption of the proposed rules will enable other courts to realize the benefits of electronic filing in the near future. In the present fiscal situation, this is highly desirable. The committees think that the proposed rules provide an effective basis for instituting mandatory electronic filing and service; the rules will enable courts to initiate mandatory electronic filing in a pragmatic, flexible manner. In addition, they recommend continuing to collect information about the experience of the trial courts that introduce mandatory electronic filing. Based on the courts’ collective experiences, such further changes in the rules, forms, and statute as may be necessary or desirable can be made in the future.

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

The approach to mandatory e-filing in AB 2073 and the rules implementing it are permissive for the courts. The decisions whether to institute mandatory e-filing and, if so, in what types and categories of civil cases, are left entirely to the discretion of the courts. Each court that decides to institute mandatory electronic filing will need to identify the fiscal and operational impacts for it, as well as the benefits that it may receive. (Comment 292; see also comments 288–291.) In the end, the authorization for courts to mandate e-filing in civil actions should result in a significant increase in the number of cases that are filed electronically. As a result, courts should realize many benefits from e-filing, including greater efficiency and lower costs to file process court records.

## **Attachments**

1. California Rules of Court, rules 2.250–2.254, 2.256, 2.258, and 2.259, at pages 44–53
2. *Request for Exemption from Mandatory Electronic Filing and Service* (form (EFS-007), at page 54
3. *Order of Exemption from Mandatory Electronic Filing and Service* (form EFS-008), at page 55
4. Guidelines for Reports on Mandatory Electronic Filing and Service, at page 56
5. Comment chart, at pages 57–289
6. Attachments A, B, C, and D to comment chart

Rules 2.250–2.254, 2.256, 2.258, and 2.259 of the California Rules of Court would be amended, effective July 1, 2013, to read:

1 **Rule 2.250. Construction and definitions**

2  
3 (a) \* \* \*

4  
5 (b) **Definitions**

6  
7 As used in this chapter, unless the context otherwise requires:

8  
9 (1)–(6) \* \* \*

10  
11 (7) “Electronic filing” is the electronic transmission to a court of a document in  
12 electronic form. For the purposes of this chapter, this definition concerns the  
13 activity of filing and does not include the processing and review of the  
14 document and its entry into the court records, which are necessary for the  
15 document to be officially filed.

16  
17 (8)–(10) \* \* \*

18  
19 **Rule 2.251. Electronic service**

20  
21 (a) ~~Consent to~~ **Authorization for electronic service**

22  
23 (1) When a document may be served by mail, express mail, overnight delivery,  
24 or fax transmission, ~~electronic service of the document may be served~~  
25 electronically under is permitted when authorized by Code of Civil Procedure  
26 section 1010.6 and these rules in this chapter.

27  
28 (b) **Electronic service by consent of the parties**

29  
30 ~~(2)~~(1) Electronic service may be established by consent of the parties in an action.

31 A party indicates that the party agrees to accept electronic service by:

32  
33 (A) Serving a notice on all parties that the party accepts electronic service  
34 and filing the notice with the court. The notice must include the  
35 electronic service address at which the party agrees to accept service; or

36  
37 (B) Electronically filing any document with the court. The act of electronic  
38 filing is evidence that the party agrees to accept service at the electronic  
39 service address the party has furnished to the court under rule  
40 2.256(a)(4). This subparagraph (B) does not apply to self-represented  
41 parties; they must affirmatively consent to electronic service under  
42 subparagraph (A).

1           ~~(3)~~(2) A party that has consented to electronic service under ~~(2)~~(1) and has used an  
2           electronic filing service provider to serve and file documents in a case  
3           consents to service on that electronic filing service provider as the designated  
4           agent for service for the party in the case, until such time as the party  
5           designates a different agent for service.  
6

7   **(c) Electronic service required by local rule or court order**  
8

9           (1) A court may require parties to serve documents electronically in specified  
10          actions by local rule or court order, as provided in Code of Civil Procedure  
11          section 1010.6 and the rules in this chapter.  
12

13          (2) Except when personal service is otherwise required by statute or rule, a party  
14          that is required to file documents electronically in an action must also serve  
15          documents and accept service of documents electronically from all other  
16          parties, unless:  
17

18           (A) The court orders otherwise, or  
19

20           (B) The action includes parties that are not required to file or serve  
21           documents electronically, including self-represented parties; those  
22           parties are to be served by non-electronic methods unless they  
23           affirmatively consent to electronic service.  
24

25          (3) Each party that is required to serve and accept service of documents  
26          electronically must provide all other parties in the action with its electronic  
27          service address and must promptly notify all other parties and the court of  
28          any changes under (f).  
29

30   **(b)(d) Maintenance of electronic service lists**  
31

32           A court that ~~orders or~~ permits or requires electronic filing in a case must maintain  
33           and make available electronically to the parties an electronic service list that  
34           contains the parties' current electronic service addresses, as provided by the parties  
35           that have filed electronically in the case.  
36

37   **(e)(e) Service by the parties**  
38

39          (1) Notwithstanding ~~(b)(d)~~, parties are responsible for electronic service on all  
40          other parties in the case. A party may serve documents electronically directly,  
41          by an agent, or through a designated electronic filing service provider.  
42

1 (2) A document may not be electronically served on a nonparty unless the  
2 nonparty consents to electronic service or electronic service is otherwise  
3 provided for by law or court order.  
4

5 **~~(d)~~(f) Change of electronic service address**

6  
7 (1)–(3) \* \* \*

8  
9 **~~(e)~~(g) Reliability and integrity of documents served by electronic notification**

10  
11 A party that serves a document by means of electronic notification must:

12  
13 (1)–(3) \* \* \*

14  
15 **~~(f)~~(h) When service is complete**

16  
17 (1) Electronic service of a document is complete at the time of the electronic  
18 transmission of the document or at the time that the electronic notification of  
19 service of the document is sent. If an electronic filing service provider is used  
20 for service, the service is complete at the time that the electronic filing  
21 service provider electronically transmits the document or sends electronic  
22 notification of service.

23  
24 (2)–(4) \* \* \*

25  
26 **~~(g)~~(i) Proof of service**

27  
28 (1)–(4) \* \* \*

29  
30 **~~(h)~~(j) Electronic service by court**

31  
32 The court may electronically serve any notice, order, judgment, or other document  
33 issued by the court in the same manner that parties may serve documents by  
34 electronic service.  
35

36  
37 **Rule 2.252. ~~Documents that may be filed electronically~~ General rules on electronic**  
38 **filing of documents**

39  
40 **(a) In general**

41  
42 A court may ~~permit~~ provide for electronic filing of ~~a~~ documents in ~~any~~ actions ~~or~~  
43 and proceedings as provided under Code of Civil Procedure section 1010.6 and the

1 rules in this chapter unless the rules in this chapter or other legal authority  
2 expressly prohibit electronic filing.

3  
4 **(b) Direct and indirect electronic filing**

5  
6 Except as otherwise provided by law, a court may provide for the electronic filing  
7 of documents directly with the court, indirectly through one or more approved  
8 electronic filing service providers, or through a combination of direct and indirect  
9 means.

10  
11 **(c) Effect of document filed electronically**

12  
13 (1) A document that the court or a party files electronically under the rules in this  
14 chapter has the same legal effect as a document in paper form.

15  
16 (2) Filing a document electronically does not alter any filing deadline.

17  
18 **(d) Filing in paper form**

19  
20 When it is not feasible for a party to convert a document to electronic form by  
21 scanning, imaging, or another means, a court may allow that party to file the  
22 document in paper form.

23  
24 **(b)(e) Original documents**

25  
26 In a proceeding that requires the filing of an original document, an electronic filer  
27 may file an electronic copy of a document if the original document is then filed  
28 with the court within 10 calendar days.

29  
30 **(e)(f) Application for waiver of court fees and costs**

31  
32 The court may permit electronic filing of an application for waiver of court fees and  
33 costs in any proceeding in which the court accepts electronic filings.

34  
35 **(d)(g) Orders and judgments**

36  
37 The court may electronically file any notice, order, minute order, judgment, or  
38 other document prepared by the court.

39  
40 **(e)(h) Proposed orders**

41  
42 Proposed orders may be filed and submitted electronically as provided in rule  
43 3.1312.

1  
2 ~~(f) **Effect of document filed electronically**~~

3  
4 (1) ~~A document that the court or a party files electronically under the rules in this~~  
5 ~~chapter has the same legal effect as a document in paper form.~~

6  
7 (2) ~~Filing a document electronically does not alter any filing deadline.~~  
8  
9

10 **Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic**  
11 **filing by court order requiring electronic service or filing**

12  
13 **(a) Permissive electronic filing**

14  
15 A court may permit parties by local rule to file documents electronically in any  
16 types of cases, directly or through approved electronic service providers, subject to  
17 the conditions in Code of Civil Procedure section 1010.6 and the rules in this  
18 chapter.

19  
20 **(b) Mandatory electronic filing**

21  
22 A court may require parties by local rule to electronically file documents in civil  
23 actions directly with the court, or directly with the court and through one or more  
24 approved electronic filing service providers, or through more than one approved  
25 electronic filing service provider, subject to the conditions in Code of Civil  
26 Procedure section 1010.6, the rules in this chapter, and the following conditions:

27  
28 (1) The court must specify the types or categories of civil actions in which  
29 parties are required to file and serve documents electronically. The court may  
30 designate any of the following as eligible for mandatory electronic filing and  
31 service:

32  
33 (A) All civil cases;

34  
35 (B) All civil cases of a specific category, such as unlimited or limited civil  
36 cases;

37  
38 (C) All civil cases of a specific case type, including but not limited to,  
39 contract, collections, personal injury, or employment;

40  
41 (D) All civil cases assigned to a judge for all purposes;  
42



- 1           (E) All civil cases assigned to a specific department, courtroom or  
2           courthouse;  
3  
4           (F) Any class actions, consolidated actions, or group of actions,  
5           coordinated actions, or actions that are complex under rule 3.403; or  
6  
7           (G) Any combination of the cases described in subparagraphs (A) to (F),  
8           inclusive.

9  
10          (2) Self-represented parties are exempt from any mandatory electronic filing and  
11          service requirements adopted by courts under this rule and Code of Civil  
12          Procedure section 1010.6.

13  
14          (3) In civil cases involving both represented and self-represented parties,  
15          represented parties may be required to file and serve documents  
16          electronically; however, in these cases, each self-represented party is to file,  
17          serve, and be served with documents by non-electronic means unless the self-  
18          represented party affirmatively agrees otherwise.

19  
20          (4) A party that is required to file and serve documents electronically must be  
21          excused from the requirements if the party shows undue hardship or  
22          significant prejudice. A court requiring the electronic filing and service of  
23          documents must have a process for parties, including represented parties, to  
24          apply for relief and a procedure for parties excused from filing documents  
25          electronically to file them by conventional means.

26  
27          (5) Any fees charged by the court shall be for no more than the cost actually  
28          incurred by the court in providing for the electronic filing and service of the  
29          documents. Any fees charged by an electronic filing service provider shall be  
30          reasonable.

31  
32          (6) Any fees for electronic filing charged by the court or by an electronic filing  
33          service provider must be waived when deemed appropriate by the court,  
34          including providing a waiver of the fees for any party that has received a fee  
35          waiver.

36  
37          (7) Any document required to be electronically filed with the court under this  
38          subdivision that is received electronically after the close of business on any  
39          day is deemed to have been filed on the next court day, unless by local rule  
40          the court provides that any document required to be electronically filed with  
41          the court under this subdivision that is received electronically before  
42          midnight on a court day is deemed to have been filed on that court day, and  
43          any document received electronically after midnight is deemed filed on the

1 next court day. This paragraph concerns only the effective date of filing. Any  
2 document that is received electronically must be processed and satisfy all  
3 other legal filing requirements to be filed as an official court record.  
4

- 5 (8) A court that adopts a mandatory electronic filing program under this  
6 subdivision must report semiannually to the Judicial Council on the operation  
7 and effectiveness of the court's program.  
8

9 **(a)(c) Electronic filing and service required by court order**  
10

- 11 (1) The court may, on the motion of any party or on its own motion, provided  
12 that the order would not cause undue hardship or significant prejudice to any  
13 party, order all parties in any class action, a consolidated action, a group of  
14 actions, a coordinated action, or an action that is complex under rule 3.403 to:

15  
16 (A) Serve all documents electronically, except when personal service is  
17 required by statute or rule;

18  
19 (B) File all documents electronically; or  
20

21 (C) Serve and file all documents electronically, except when personal  
22 service is required by statute or rule.  
23

- 24 (2) If the court proposes to make any order under (1) on its own motion, the  
25 court must mail notice to the parties. Any party may serve and file an  
26 opposition within 10 days after notice is mailed or such later time as the court  
27 may specify.  
28

- 29 (3) If the court has previously ordered parties in a case to electronically serve or  
30 file documents and a new party is added that the court determines should also  
31 be ordered to do so under (1), the court may follow the notice procedures  
32 under (2) or may order the party to electronically serve or file documents and  
33 in its order state that the new party may object within 10 days after service of  
34 the order or by such later time as the court may specify.  
35

36 **(b) Additional provisions of order**

- 37 (4) The court's order may also provide that:  
38

39 ~~(1)~~(A) Documents previously filed in paper form may be resubmitted in  
40 electronic form; and  
41

1 (2)(B) When the court sends confirmation of filing to all parties, receipt of  
 2 the confirmation constitutes service of the filing if the filed document  
 3 is available electronically.  
 4

5 **(e) Filing in paper form**  
 6

7 ~~When it is not feasible for a party to convert a document to electronic form by~~  
 8 ~~scanning, imaging, or another means, a court may allow that party to serve, file, or~~  
 9 ~~serve and file the document in paper form.~~

10  
 11 **Advisory Committee Comment**  
 12

13 Subdivision (b)(1). This subdivision allows courts to institute mandatory electronic filing and  
 14 service in any type of civil case for which the court determines that mandatory electronic filing is  
 15 appropriate. The scope of this authorization is meant to be broad. It will enable courts to  
 16 implement mandatory electronic filing in a flexible yet expansive manner. However, in initiating  
 17 mandatory electronic filing, courts should take into account the fact that some civil case types  
 18 may be easier and more cost-effective to implement at the outset while other types may  
 19 require special procedures or other considerations (such as the need to preserve the confidentiality  
 20 of filed records) that may make them less appropriate for inclusion in initial mandatory e-filing  
 21 efforts.  
 22

23 Subdivision (b)(2). Although this rule exempts self-represented parties from any mandatory  
 24 electronic filing and service requirements, these parties are encouraged to participate voluntarily  
 25 in electronic filing and service. To the extent feasible, courts and other entities should assist self-  
 26 represented parties to electronically file and serve documents.  
 27

28 Subdivision (c). Court-ordered electronic filing and service under this subdivision are not  
 29 subject to the provisions in (b) and Code of Civil Procedure section 1010.6 requiring that, where  
 30 mandatory electronic filing and service are established by local rule, the court and the parties  
 31 must have access to more than one electronic filing service provider.  
 32

33 **Rules 2.254. Responsibilities of court**  
 34

35 **(a) Publication of electronic filing requirements**  
 36

37 Each court that permits or mandates electronic filing must publish, in both  
 38 electronic and print formats, the court’s electronic filing requirements.  
 39

40 **(b) Problems with electronic filing**  
 41

1 If the court is aware of a problem that impedes or precludes electronic filing during  
2 the court's regular filing hours, it must promptly take reasonable steps to provide  
3 notice of the problem.  
4

5 **(c) Public access to electronically filed documents**

6  
7 Except as provided in rules 2.250–2.259 and 2.500–2.506, an electronically filed  
8 document is a public document at the time it is filed unless it is sealed under rule  
9 2.551(b) or made confidential by law.  
10

11  
12 **Rule 2.256. Responsibilities of electronic filer**

13  
14 **(a) Conditions of filing**

15  
16 Each electronic filer must:

- 17  
18 (1) Comply with any court requirements designed to ensure the integrity of  
19 electronic filing and to protect sensitive personal information;  
20  
21 (2) Furnish information the court requires for case processing;  
22  
23 (3) Take all reasonable steps to ensure that the filing does not contain computer  
24 code, including viruses, that might be harmful to the court's electronic filing  
25 system and to other users of that system;  
26  
27 (4) Furnish one or more electronic service addresses, in the manner specified by  
28 the court, at which the electronic filer agrees to accept service; ~~and~~  
29  
30 (5) Immediately provide the court and all parties with any change to the  
31 electronic filer's electronic service address; and  
32  
33 (6) If the electronic filer uses an electronic filing service provider, provide the  
34 electronic filing service provider with the electronic address at which the filer  
35 is to be sent all documents and immediately notify the electronic filing  
36 service provider of any change in that address.  
37

38 **(b) Format of documents to be filed electronically**

39  
40 A document that is filed electronically with the court must be in a format specified  
41 by the court unless it cannot be created in that format. The format adopted by a  
42 court must meet the following requirements:  
43

- 1 (1) The software for creating and reading documents must be in the public  
2 domain or generally available at a reasonable cost.  
3  
4 (2) The printing of documents must not result in the loss of document text,  
5 format, or appearance.  
6

7 If a document is filed electronically under the rules in this chapter and cannot be  
8 formatted to be consistent with a formatting rule elsewhere in the California Rules  
9 of Court, the rules in this chapter prevail.  
10

11 **Rule 2.258. Payment of filing fees**

12  
13 **(a) Use of credit cards and other methods**  
14

15 A court may permit the use of credit cards, debit cards, electronic fund transfers, or  
16 debit accounts for the payment of filing fees associated with electronic filing, as  
17 provided in Government Code section 6159, rule 10.820, and other applicable law.  
18 A court may also authorize other methods of payment.  
19

20 **(b) Fee waivers**  
21

22 Eligible persons may seek a waiver of court fees and costs, as provided in  
23 Government Code sections 68630–68641, rule 2.252~~(e)~~(f), and division 2 of title 3  
24 of these rules.  
25  
26

27 **Rule 2.259. Actions by court on receipt of electronic filing**  
28

29 **(a)–(b) \* \* \***  
30

31 **(c) Document received after close of business**  
32

33 A document that is received electronically by the court after the close of business is  
34 deemed to have been received on the next court day, unless the court has provided  
35 by local rule, with respect to documents filed under the mandatory electronic filing  
36 provisions in rule 2.253(b)(7), that documents received electronically before  
37 midnight on a court day are deemed to have been filed on that court day, and  
38 documents received electronically after midnight are deemed filed on the next court  
39 day. This provision concerns only the effective date of filing. Any document that is  
40 electronically filed must be processed and satisfy all other legal filing requirements  
41 to be filed as an official court record.  
42

43 **(d)–(f) \* \* \***

ATTORNEY (Name, State Bar number, and address):   TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
<b>REQUEST FOR EXEMPTION FROM MANDATORY ELECTRONIC FILING AND SERVICE</b>	

1. I, *(name of applicant)*: \_\_\_\_\_, request to be exempt from the requirements for electronic  
 filing  service in this case because It would cause undue hardship or significant prejudice for the following reasons:


a.  I do not readily have access to a computer with Internet access.

b.  Other *(please specify)*: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

 \_\_\_\_\_  
 (SIGNATURE OF DECLARANT)

ATTORNEY (Name, State Bar number, and address):   TELEPHONE NO.: _____ FAX NO. : _____ E-MAIL ADDRESS: ATTORNEY FOR (Name):	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	CASE NUMBER:
<b>ORDER OF EXEMPTION FROM ELECTRONIC FILING AND SERVICE</b>	

The court has reviewed the request for exemption and makes the following orders:

1.  The court **grants** the request for exemption. The applicant may:
  - file  serve all documents in this case in paper form.
2.  The court **denies** the request for exemption for the following reason: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
3.  The court needs more information to decide whether to grant the application request. The applicant must appear in court on the date below:

Name and address of court if different from above:

**Hearing  
Date**

→ Date: \_\_\_\_\_ Time: \_\_\_\_\_ \_\_\_\_\_  
 Dept.: \_\_\_\_\_ Room: \_\_\_\_\_ \_\_\_\_\_  
 \_\_\_\_\_

Date:

\_\_\_\_\_  
 JUDICIAL OFFICER

**Clerk's Certificate of Service**

I certify that I am not a party to this action and (check one):

- A certificate of mailing is attached.
- I handed a copy of this order to the applicant listed above, at the court, on the date below.
- This order was mailed first class, postage paid, to the applicant at the address listed above, from (city): \_\_\_\_\_, California on the date below.

Date:

By: \_\_\_\_\_  
 DEPUTY CLERK

## **Guidelines for Reports on Mandatory Electronic Filing and Service**

### **Introduction**

Pursuant to Assembly Bill 2073, the Judicial Council has adopted uniform statewide rules on mandatory electronic filing and service. Courts that establish mandatory electronic filing and service programs must provide semiannual reports to the Judicial Council. (See Cal. Rules of Court, rule 2.253(b)(8).) The purpose of the reports is to enable the council to evaluate the mandatory electronic filing programs and improve electronic filing and service in the courts. These guidelines are intended to assist the courts in preparing and submitting their reports.

### **Time of Submission**

Reports are due semiannually and should be submitted by July 1 and January 1 of each year.

### **Place of Submission**

The reports should be submitted by e-mail to the Judicial Council's Technology Committee at: [mefs@jud.ca.gov](mailto:mefs@jud.ca.gov)

### **Contents of reports**

The reports should contain, at a minimum, the following information:

- A description of the court's electronic filing and service programs, including both mandatory and voluntary programs;
- A description of all categories and types civil cases that the court requires to be filed electronically;
- The number of cases in each category or type filed electronically rather than in paper each month under the court's mandatory and voluntary electronic filing programs;
- The number of requests for exemption from mandatory e-filing submitted each month and their disposition;
- Whether the court uses the "close of business" standard or the "file until midnight" standard for determining the effective date of filings, and a description of the court's and users' experience with the standard or standards used by the court;
- Estimated time to process documents filed electronically as opposed to paper filings;
- Estimated costs of establishing and maintaining the court's mandatory electronic filing program, and estimated savings from the program;
- The identities of the electronic filing service providers used by the court;
- The nature and amount of any fees charged by electronic filing service providers or by the court for electronically filing documents;
- A description of the services that the court and any local legal aid or other organizations are providing to assist self-represented parties to file and serve documents electronically;
- Any other information that is relevant to evaluating the mandatory electronic filing and service programs in the court; and
- Any recommendations for improving electronic filing and service in the state courts.

The reports should attached copies of all local rules and forms adopted by the court to implement mandatory electronic filing and service.

*Approved by the Technology Committee of the Judicial Council of California effective July 1, 2013.*