



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-164

For business meeting on October 1, 2021

Title

Appellate Procedure: Electronic Signatures

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.70 and 8.75

Effective Date

January 1, 2022

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Date of Report

August 16, 2021

Contact

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Executive Summary

The Appellate Advisory Committee recommends amending two rules of court governing electronic filing in the appellate courts to permit the use of electronic signatures and make other updates. The trial court electronic filing rules have been amended several times recently, including to allow electronic signatures. Several similar amendments for the parallel appellate rules are now being proposed to foster modern e-business practices, promote consistency in the rules and efficiency among stipulating parties, and reduce unnecessary transmission of paper documents. The rules would be amended to authorize the use of electronic signatures on electronic documents filed with the court, add new definitions, update several existing definitions, improve clarity, and eliminate redundancies.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2022:

1. Amend rule 8.70 of the California Rules of Court to clarify several definitions, add two new definitions, and add advisory committee comments for further clarification.

2. Amend rule 8.75 to add provisions for using electronic signatures on documents filed with the court and add advisory committee comments for clarification.

The text of the amended rules is attached at pages 9–13.

Relevant Previous Council Action

Rules 8.70 to 8.79,¹ the appellate e-filing rules, were adopted effective July 1, 2010. The rules were renumbered and amended effective January 1, 2017, to eliminate conflicts that had developed between appellate court local rules and the rules of court, and to provide consistency in the e-filing practices of the Courts of Appeal where consistency was desirable. At that time, the Supreme Court had not yet adopted e-filing. Rule 8.70 was amended to remove references to e-filing pilot projects; rule 8.75, previously rule 8.77, was renumbered.

The trial court e-filing rules, which fall within the purview of the Information Technology Advisory Committee (ITAC), have been amended several times recently. Effective January 1, 2018, rule 2.250, the trial court rule containing e-filing definitions, was amended to conform to Judicial Council–sponsored amendments to Code of Civil Procedure section 1010.6. Effective January 1, 2019, new e-filing definitions were added and others were replaced by reference to statute.

Effective January 1, 2018, the Judicial Council amended rule 2.257, the trial court rule governing requirements for signatures on documents, to add a provision for electronic signatures as authorized in amended Code of Civil Procedure section 1010.6. Rule 2.257 was further amended effective January 1, 2019, to add a definition of “electronic signature” and authorize the use of electronic signatures on documents signed under penalty of perjury. One year later, effective January 1, 2020, rule 2.257 was amended again to authorize using an electronic signature for a document signed under penalty of perjury when the declarant is not the filer. The option to use electronic signatures was also added for documents not signed under penalty of perjury, including stipulations and other documents requiring multiple signatures.

Analysis/Rationale

Appellate rule 8.70 defines terms used in the electronic filing rules; rule 8.75 governs signatures on documents filed with the court. The parallel trial court rules are rule 2.250 and 2.257. Unlike trial court rule 2.257, appellate rule 8.75 does not provide for use of electronic signatures on electronically filed documents. The proposal would update rule 8.75 by making changes similar to the recent amendments to rule 2.257. The committee recommends adoption of these proposed amendments to enable litigants to use electronic signatures and bring the rule into conformity with current e-filing practices.

¹ All rule references are to the California Rules of Court unless otherwise noted.

Definitions of “electronic signature” and “secure electronic signature”

The proposal adds definitions for new terms “electronic signature” and “secure electronic signature” to rule 8.70. The definition of “electronic signature” is identical to the definition in trial court rule 2.257: “An ‘electronic signature’ is an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.” This language is modeled on definitions used in the Uniform Electronic Transactions Act, Civil Code sections 1633.1–1633.17, specifically Civil Code section 1633.2(g) and (h). Unlike the trial court rules, which include the definition of an electronic signature in the rule on requirements for signatures on documents (rule 2.257(a)), the proposal places the new definition in rule 8.70(c) with other definitions of terms used in the appellate electronic filing rules.

The term “secure electronic signature” was added to the rule based on public comments noting that the term “electronic signature” in the proposal that circulated was used to describe two different things: (1) the electronic signature described above, and (2) an electronic signature with heightened security features that is required for certain types of documents. Under rule 2.257, declarations signed under penalty of perjury where the declarant is not the electronic filer and documents signed by multiple individuals—such as stipulations—must be signed with an electronic signature that is “unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data such that, if the data are changed, the electronic signature is invalidated.” This language is based on several provisions of a “digital signature” as defined in Government Code section 16.5.

The comments suggested using a separate term for this more restricted electronic signature to clarify the difference between the two types and streamline rule 8.75. Although it is a departure from the trial court rule, the committee concluded that these modifications would improve the rule without substantively changing any procedures or creating conflict with the trial court rules. Therefore, the committee recommends adding the definition of “secure electronic signature” to rule 8.70(c) and using that term in rule 8.75. Also based on comments seeking clarification, the proposal includes new advisory committee comments providing information on the source of both definitions.

Amendments to rule 8.70

The proposal makes other amendments that largely mirror the parallel trial court rule containing definitions of electronic filing terms, rule 2.250(c). The proposal:

- Amends and reorganizes the definition of “document” to avoid using the word “document” in the definition, maintain internal consistency by referring to “any writing” rather than “any filing,”² and maintain parallel structure with the rest of the subdivision.

² The change from “any *filing* submitted to the reviewing court” to “any *writing* . . .” is also intended to reflect that a document includes a submission to the reviewing court that is not filed, such as a document that is lodged.

- Amends the definition of “electronic filing” to clarify that it refers to the action of filing by the filer and does not include the steps taken by the court upon receipt of the document.
- Amends definitions for “electronic service,” “electronic filer,” and “electronic filing service provider” to include nonparties in provisions related to electronic filing and service. Although less common than in trial court proceedings, there are instances in which electronic filing and service by or upon nonparties takes place in appellate proceedings. The amendments add “or other person” to account for others who may be involved in a case but are not parties.
- Makes minor changes to improve clarity and accuracy.

Rule 8.75

The proposal adds procedures for using electronic signatures in addition to the existing provisions for using original ink signatures on a hard copy or copies of a signed signature page. The amendments provide that an electronically filed document signed under penalty of perjury is deemed to have been signed by the declarant if (1) the declarant has signed using an electronic signature (or a secure electronic signature if the declarant is not the electronic filer) and declares under penalty of perjury under the laws of the State of California that the information submitted is true and correct, or (2) the physically signed printed document is available for inspection and copying.

For documents not signed under penalty of perjury, the document is deemed signed by the electronic filer. If the document requires the signatures of multiple persons, the document is deemed to have been signed by those persons if they have signed using a secure electronic signature or the physically signed printed document is available for inspection and copying. Except for use of the term “secure electronic signature,” these procedures are the same as those in the trial court rules.

Mirroring amendments to the trial court rule, the proposal deletes a separate subdivision for documents that require multiple signatures. Current rule 8.75 is organized to address documents that are signed under penalty of perjury, documents that are not signed under penalty of perjury, and documents that require multiple signatures. Documents that require multiple signatures are not signed under penalty of perjury and can be addressed as part of that category. Also mirroring the trial court rule, the proposal adds an advisory committee comment providing that “[t]he requirements for electronic signatures that are compliant with the rule do not impair the power of the courts to resolve disputes about the validity of a signature.”

Policy implications

This proposal fosters modern e-business practices, promotes consistency in the rules and efficiency among stipulating parties, and reduces unnecessary transmission of paper documents, all of which are consistent with the Judicial Council’s goal of improving access to justice.

Comments

The proposed amended rules were circulated for public comment between April 15 and May 27, 2021, as part of the regular spring comment cycle. The committee received nine comments on this proposal. Six commenters, the California Department of Child Support Services, the Child Support Directors Association, a private law firm, the Orange County Bar Association (OCBA), the Superior Court of San Diego County, and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JRS), agreed with the proposal. The California Academy of Appellate Lawyers (CAAL); the California Lawyers Association Committee on Appellate Courts, Litigation Section (CAC); and the Court of Appeal, Third Appellate District (Third District) agreed with the proposal if modified. A chart with the full text of the comments received and the committee's responses is attached at pages 14–36.

The comments unanimously support authorizing electronic signatures. The child support services organizations both described the positive impact these changes would have on their programs. The JRS noted that the proposal may result in cost savings for litigants who spend substantial time securing appropriate original signatures. A number of commenters also submitted suggestions for clarifying and simplifying the rules. In addressing the comments, the committee sought to balance the goals of maintaining consistency with the trial court rules and updating the appellate rules to be clear, easy to apply, and to reflect current e-filing practice. Accordingly, the committee recommends making several modifications that would not create a conflict with the parallel trial court rules. Other suggestions that would change procedures or create substantial differences between the trial court and appellate court rules would best be considered jointly with ITAC to maintain consistency in the rules. The committee will share these suggestions with ITAC for discussion regarding a potential joint project.

Types of electronic signature

As noted above, the committee received comments pointing out that the proposed amendments used the term “electronic signature” to describe two different types of electronic signature, one with heightened security features. The committee recommends using the term “secure electronic signature” for the more restricted type, defining it in rule 8.70 and using it in rule 8.75. The proposal also adds advisory committee comments that provide information on the source of the terms “electronic signature” and “secure electronic signature.”

Commenters questioned the language in existing rule 8.75 that referenced digital signatures without explaining that they are defined in Government Code section 16.5 and instead simply indicated they are not required. The committee agreed that the existing subdivision regarding digital signatures is confusing and recommends deleting it. Although these modifications are a departure from the trial court rule, the clarification they would provide is significant.

Electronic signature requirements satisfied by electronic filing

To address concerns regarding whether an electronically filed document complies with the rule's electronic signature requirements, one commenter suggested including a provision identical to rule 8 of the Supreme Court Rules Regarding Electronic Filing. That rule provides that “[u]se of

a registered TrueFiling user's username and password to electronically file a document is the equivalent of placing the registered user's electronic signature on the document." The committee declined to add such a provision, concluding that such an addition would, in part, be duplicative of rule 8.75(c)(1), which provides that a document not signed under penalty of perjury is deemed signed by the electronic filer. At the same time, it would be inaccurate as to documents signed under penalty of perjury under (b)(1) and documents with multiple signatures under (c)(2), because—as recommended in the proposal—these documents require the placement of a signature on the document: either an electronic or secure electronic signature or a physically signed printed document available for inspection and copying.

Request for specific comments

The invitation to comment included a request for specific comments on a procedure in rule 8.75 related to documents requiring the signatures of multiple parties. Specifically, the rule provides that such a document is deemed to have been signed by those persons if filed electronically and the filer has obtained all the signatures either in the form of an original signature on a printed form of the document or in the form of a copy of the signed signature page. The filer must maintain the original signed document and any copies of signed signature pages and make them available for inspection and copying upon demand. Based on the concerns of several committee members that this procedure involving manual signatures and hard copies is outdated, the invitation to comment requested feedback on whether the procedure comports with current practice.

The OCBA expressed the same sentiment, writing that “[c]urrent practice regarding such documents is often for the parties’ counsel to email each other regarding a stipulation. Once the parties’ counsel agree to the substance and language of the stipulation, the filing party’s counsel will inquire whether he/she has permission from the opposing party’s counsel to ‘electronically sign’ on the opposing counsel’s behalf. Opposing counsel will respond via email confirming the filing party’s counsel has permission. The filing party’s counsel will then use a simple ‘/s/ Opposing Counsel’ on the signature line, representing to the Court that both parties’ counsel have agreed to the stipulation.” Other comments endorsed the current procedure. The committee concluded that, to maintain similar procedures in both trial courts and appellate courts, no change to the provision as circulated should be made at this time. The committee will retain the OCBA’s suggestion for consideration with ITAC at a future time.

Other comments

The committee received several additional suggestions to modify definitions, provide more information to clarify terms, simplify procedures, and reorganize rule 8.75. The committee recommends that these suggestions be considered jointly with ITAC in the future to maintain consistency between trial court and appellate court rules where appropriate. The suggestions include:

- Reorganizing rule 8.75 based on what type of electronic signature is required, i.e., documents requiring a “secure electronic signature” and all other documents that may be

signed with an “electronic signature.” Currently, the rule is organized based on whether a document must be signed under penalty of perjury.

- Clarifying the definition of “electronic signature” to explain technical terms and omit reference to an “electronic sound.”
- Modifying the requirement that a secure electronic signature must be under the “sole control” of the declarant and instead require that the declarant have “sole authority” over it. The change would facilitate implementation, as many attorneys give signing authority to other attorneys on a case or to staff, and many litigants give their attorneys signing authority.
- Expanding advisory committee comments to provide guidance on what forms of electronic signature satisfy the requirements.
- Removing the requirement for a secure electronic signature on documents with multiple signatures because it is unnecessary. Instead, require the filer to attest that all signatories have approved the content and authorized the filing. The signatories will receive copies through TrueFiling and can contest a document purporting to have the authorization of an attorney who has not authorized the filing.

Alternatives considered

Because the appellate electronic filing rules had fallen out of date and did not include the option to use electronic signatures, the committee did not consider the alternative of taking no action.

The committee considered maintaining strict consistency with the trial court rules, but concluded that adding a new term for the more restricted type of electronic signature and deleting the provision regarding digital signatures were significant improvements to the rules and do not create conflicts or confusion between appellate and trial court rules.

Fiscal and Operational Impacts

The proposal authorizes the use of electronic signatures on documents filed with the court. Implementation would include training for court staff and incorporating the information into court procedures, but the impacts would be minimal. There is also a potential for impact to automated systems in adapting/modifying existing configurations.

Attachments and Links

1. Cal. Rules of Court, rules 8.70 and 8.75, at pages 8–12
2. Chart of comments, at pages 13–35

Rules 8.70 and 8.75 of the California Rules of Court are amended, effective January 1, 2022, to read:

1 **Rule 8.70. Application, construction, and definitions**

2
3 **(a) Application**

4
5 Notwithstanding any other rules to the contrary, the rules in this article govern
6 filing and service by electronic means in the Supreme Court and the Courts of
7 Appeal.

8
9 **(b) Construction**

10
11 The rules in this article must be construed to authorize and permit filing and service
12 by electronic means to the extent feasible.

13
14 **(c) Definitions**

15
16 As used in this article, unless the context otherwise requires:

17
18 (1) “The court” means the Supreme Court or a Court of Appeal.

19
20 (2) A “document” is:

21
22 ~~(A)~~ any filing writing submitted to the reviewing court by a party or other
23 person, including a brief, a petition, an appendix, or a motion;

24
25 ~~(B)~~ Any A document is also any writing transmitted by a trial court to the
26 reviewing court, including a notice or a clerk’s or reporter’s transcript;
27 and

28
29 ~~(C)~~ any writing prepared by the reviewing court, including an opinion, an
30 order, or a notice.

31
32 ~~(D)~~ A document may be in paper or electronic form.

33
34 (3) “Electronic service” is service of a document on a party or other person by
35 either electronic transmission or electronic notification. Electronic service
36 may be performed directly by a party or other person, by an agent of a party
37 or other person including the party’s or other person’s attorney, through an
38 electronic filing service provider, or by a court.

39
40 (4) “Electronic transmission” means the ~~transmission~~ sending of a document by
41 electronic means to the electronic service address at or through which a party
42 or other person has authorized electronic service.

- 1
2 (5) “Electronic notification” means the notification of a party or other person that
3 a document is served by sending an electronic message to the electronic
4 service address at or through which the party or other person has authorized
5 electronic service, specifying the exact name of the document served and
6 providing a hyperlink at which the served document can be viewed and
7 downloaded.
8
- 9 (6) “Electronic service address” ~~of a party~~ means the electronic address at or
10 through which ~~the~~ a party or other person has authorized electronic service.
11
- 12 (7) An “electronic filer” is a ~~party~~ person filing a document in electronic form
13 directly with the court, by an agent, or through an electronic filing service
14 provider.
15
- 16 (8) “Electronic filing” is the electronic transmission to a court of a document in
17 electronic form for filing. Electronic filing refers to the activity of filing by
18 the electronic filer and does not include the court’s actions upon receipt of the
19 document for filing, including processing and review of the document and its
20 entry into the court’s records.
21
- 22 (9) An “electronic filing service provider” is a person or entity that receives an
23 electronic ~~filing~~ document from a party or other person for retransmission to
24 the court or for electronic service on other parties, or both. In ~~submission of~~
25 submitting electronic filings, the electronic filing service provider does so on
26 behalf of the electronic filer and not as an agent of the court.
27
- 28 (10) An “electronic signature” is an electronic sound, symbol, or process attached
29 to or logically associated with an electronic record and executed or adopted
30 by a person with the intent to sign a document or record created, generated,
31 sent, communicated, received, or stored by electronic means.
32
- 33 (11) A “secure electronic signature” is a type of electronic signature that is unique
34 to the person using it, capable of verification, under the sole control of the
35 person using it, and linked to data in such a manner that if the data are
36 changed, the electronic signature is invalidated.
37

Advisory Committee Comment

38
39
40 **Subdivision (c)(3)**. The definition of “electronic service” has been amended to provide that a
41 party may effectuate service not only by the electronic transmission of a document, but also by
42 providing electronic notification of where a document served electronically may be located and
43 downloaded. This amendment is intended to ~~modify the rules on electronic service to expressly~~

1 authorize electronic notification as a ~~legally effective~~ an alternative means of service to electronic
2 ~~transmission~~. This ~~rules~~ amendment is consistent with the amendment of Code of Civil Procedure
3 section 1010.6, effective January 1, 2011, to authorize service by electronic notification. (See
4 Stats. 2010, ch. 156 (Sen. Bill 1274).) The amendments change the law on electronic service as
5 understood by the appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170
6 Cal.App.4th 1129, which interpreted the rules as authorizing only electronic transmission as ~~the~~
7 only an effective means of electronic service.

8
9 **Subdivision (c)(10).** The definition of electronic signature is based on the definition in the
10 Uniform Electronic Transactions Act, Civil Code section 1633.2.

11
12 **Subdivision (c)(11).** The definition of secure electronic signature is based on the first four
13 requirements of a “digital signature” set forth in Government Code section 16.5(a), specifically
14 the requirements stated in section 16.5(a)(1)–(4). The section 16.5(a)(5) requirement of
15 conformance to regulations adopted by the Secretary of State does not apply to secure electronic
16 signatures.

17 18 **Rule 8.75. Requirements for signatures on documents**

19 20 **(a) Documents signed under penalty of perjury**

21
22 ~~If~~ When a document ~~to be filed electronically~~ must be signed under penalty of
23 perjury, ~~the following procedure applies~~ document is deemed to have been signed
24 by the declarant if filed electronically, provided that either of the following
25 conditions is satisfied:

- 26
27 (1) ~~The document is deemed signed by the declarant if, before filing, the~~
28 ~~declarant has signed a printed form of the document. The declarant has~~
29 signed the document using an electronic signature (or a secure electronic
30 signature if the declarant is not the electronic filer) and declares under
31 penalty of perjury under the laws of the State of California that the
32 information submitted is true and correct; or
33
34 (2) The declarant, before filing, has physically signed a printed form of the
35 document. By electronically filing the document, the electronic filer certifies
36 that (1) has been complied with and that the original signed document is
37 available for inspection and copying at the request of the court or any other
38 party. In the event this second method of submitting documents electronically
39 under penalty of perjury is used, the following conditions apply:

- 40
41 ~~(3)~~(A) At any time after the electronic version of the document is filed,
42 any other party may serve a demand for production of the original

1 signed document. The demand must be served on all other parties but
2 need not be filed with the court.

3
4 ~~(4)~~(B) Within five days of service of the demand under ~~(3)~~(A), the party
5 or other person on whom the demand is made must make the original
6 signed document available for inspection and copying by all other
7 parties.

8
9 ~~(5)~~(C) At any time after the electronic version of the document is filed,
10 the court may order the ~~filing party~~ electronic filer to produce the
11 original signed document ~~in court~~ for inspection and copying by the
12 court. The order must specify the date, time, and place for the
13 production and must be served on all parties.

14
15 **(b) Documents not signed under penalty of perjury**

16
17 (1) If a document does not require a signature under penalty of perjury, the
18 document is deemed signed by the party ~~if the document is filed~~
19 electronically electronic filer.

20
21 ~~(e) Documents requiring signatures of multiple parties~~

22
23 (2) When a document to be filed electronically, such as a stipulation, requires the
24 signatures of multiple ~~parties~~ persons, ~~the following procedure applies~~ the
25 document is deemed to have been signed by those persons if filed
26 electronically, provided that either of the following procedures is satisfied:

27
28 ~~(1)~~(A) ~~The party filing the document must obtain the signatures of all~~
29 ~~parties either in the form of an original signature on a printed form of~~
30 ~~the document or in the form of a copy of the signed signature page of~~
31 ~~the document. By electronically filing the document, the electronic filer~~
32 ~~indicates that all parties have signed the document and that the filer has~~
33 ~~the signatures of all parties in a form permitted by this rule in his or her~~
34 ~~possession. The parties or other persons have signed the document~~
35 ~~using a secure electronic signature; or~~

36
37 ~~(2)~~(B) ~~The party filing the document must maintain the original signed~~
38 ~~document and any copies of signed signature pages and must make~~
39 ~~them available for inspection and copying as provided in (a)(2). The~~
40 ~~court and any other party may demand production of the original signed~~
41 ~~document and any copies of signed signature pages in the manner~~
42 ~~provided in (a)(3)–(5). The electronic filer has obtained all the~~
43 ~~signatures either in the form of an original signature on a printed form~~

1 of the document or in the form of a copy of the signed signature page of
2 the document. The electronic filer must maintain the original signed
3 document and any copies of signed signature pages and must make
4 them available for inspection and copying as provided in (a)(2)(B). The
5 court and any party may demand production of the original signed
6 document and any copies of the signed signature pages as provided in
7 (a)(2)(A)–(C). By electronically filing the document, the electronic filer
8 indicates that all persons whose signatures appear on it have signed the
9 document and that the filer has possession of the signatures of all those
10 persons in a form permitted by this rule.

11
12 **(d) Digital signature**

13
14 ~~A party is not required to use a digital signature on an electronically filed~~
15 ~~document.~~

16
17 **(e)(c) Judicial signatures**

18
19 If a document requires a signature by a court or a judicial officer, the document
20 may be electronically signed in any manner permitted by law.

21
22 **Advisory Committee Comment**

23
24 The requirements for electronic signatures that are compliant with the rule do not impair the
25 power of the courts to resolve disputes about the validity of a signature.
26

SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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

	Commenter	Position	Comment	Draft Committee Response
1.	California Academy of Appellate Lawyers By Rochelle Wilcox Chair, Rules Committee	AM	<p>The California Academy of Appellate Lawyers (CAAL) is an election-only organization of approximately 100 members devoted to excellence in appellate practice. The CAAL has active committees devoted to amicus curiae participation and input on appellate rule changes, and seeks to improve appellate practice and access to justice in the California appellate courts.</p> <p>The CAAL supports proposal SPR21-01 and agrees that the option to use electronic signatures provides litigants with a potentially faster and more convenient way to obtain needed signatures on documents to be filed in the appellate courts, which is important and relevant during the coronavirus pandemic and in the future event of similar public emergencies.</p> <p>The CAAL also supports the goal of updating the rules governing electronic signatures in the appellate courts to provide clarity and consistency with the trial court rules. However, the CAAL is concerned that the incorporation of the definition of an “electronic signature” that is currently used in the trial court rules will be potentially confusing to appellate practitioners. For example, an appellate practitioner lacking a technical background will be unlikely to understand what is meant by rule 8.70(c)(10)’s definition of an “ ‘electronic signature’ ” as “an electronic sound, symbol, or process attached to or logically associated with an electronic record”—even if that definition is consistent</p>	<p>The committee thanks the commenter for submitting this feedback.</p> <p>The committee notes the commenter’s support for the proposal.</p> <p>The committee notes the commenter’s concern with technical language in several proposed amendments to the rules. As indicated in the invitation to comment, the language is based on recent amendments to the trial court rules and the statutory sources are cited in advisory committee comments. One goal of the rules modernization project has been to maintain consistency between the trial court rules and the appellate rules to the extent it is appropriate. The committee is unaware of any problems trial court practitioners have experienced with these terms and concluded that no changes should be made to the appellate rules at this time. However, the committee agrees that simplified language or more explanation could be</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-01

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	Commenter	Position	Comment	Draft Committee Response
			<p>with some industry standard. Nor will the average practitioner understand what is meant by rule 8.75(a)(1)'s proposed requirement that "the electronic signature must be . . . linked to data such that, if the data are changed, the electronic signature is invalid." (See also proposed rule 8.75(b)(2)(B) [containing similar language].) Adding further confusion is rule 8.75(c)'s statement that a "party or other person is not required to use a digital signature on an electronically filed document." A new proposed Advisory Committee Comment to rule 8.75 suggests there is some difference between an "electronic signature" and a "digital signature," but fails to explain what that difference is.</p> <p>The CAAL recommends that the Advisory Committee Comments be expanded to provide non-technical guidance on what satisfies the newly added electronic signature definition. For example, does the insertion into a document of an image of a person's signature comply with the rule? Does the "/s/ [attorney name]" method used for electronic federal court filings comply? Must an attorney use one of the "secure electronic signature internet services" referenced in the proposal to comply? What is meant by the requirement that the electronic signature be "linked to data such that, if the data are changed, the electronic signature is invalid"? And how is an "electronic" signature different than a "digital" signature? A practitioner reading the rule should not be obliged to search the internet or do other research in order to</p>	<p>helpful and will retain these comments for future consideration as to both trial court and appellate court rules with Information Technology Advisory Committee (ITAC).</p> <p>The committee agrees and has deleted the subdivision regarding digital signatures.</p> <p>As stated above, the committee agrees that more guidance may be helpful, but any such guidance should be developed for both trial court and appellate court rules. The committee will retain these suggestions for consideration in a potential future project with ITAC to examine both sets of rules and develop recommendations jointly.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-01

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			<p>understand these requirements and what is intended or permitted. The Advisory Committee Comments should either directly address these questions, or refer practitioners to a source (or sources) containing the answers.</p> <p>The CAAL notes that Rule 8 of the Supreme Court Rules Regarding Electronic Filing currently provides that “[u]se of a registered TrueFiling user’s username and password to electronically file a document is the equivalent of placing the registered user’s electronic signature on the document.” The CAAL recommends that an identical provision be included with the other amendments to rule 8.75. Such inclusion would provide assurance to practitioners that, regardless of their understanding of the rule’s other technical requirements, a document filed through the TrueFiling system will be in compliance with the rule’s electronic signature requirements.</p> <p>The CAAL offers two other minor suggestions: 1. Rule 8.75(b)(2) pertains to documents that require the signatures of multiple parties. To preserve parallelism, subdivision (b)(2)(B) might be modified as follows: The party parties or other person persons has have signed the document using an electronic signature and that electronic signature is unique to the person using it, capable of verification, under the sole control of the person using it, and linked to data such that, if the data are changed, the electronic signature is invalidated.</p>	<p>The committee disagrees with adding a provision identical to Rule 8. The committee concluded that such an addition would, in part, be duplicative of rule 8.75(c)(1), which provides that a document not signed under penalty of perjury is deemed signed by the electronic filer. At the same time, it would be inaccurate as to documents signed under penalty of perjury under (b)(1) and documents with multiple signatures under (c)(2), because—as recommended in the proposal—these documents require the placement of a signature on the document: either an electronic or secure electronic signature or an original signature on a printed form of the document or in the form of a copy of the signed signature page of the document.</p> <p>The committee agrees and has made this change.</p>

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SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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			<p>2. Page 2 of proposal SPR21-01 refers to the definitions in “rule 2.250(c),” but likely intended to cite rule 2.250(b), as that rule has no subdivision (c).</p>	The committee regrets this error.
3.	<p>California Department of Child Support Services By John Ziegler Attorney III</p>	A	<p>The California Department of Child Support Services (Department) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies, and our case participants. Below please find specific feedback regarding provisions of the rules with potential impacts to the Department and its stakeholders.</p> <p>REQUEST FOR SPECIFIC COMMENTS:</p> <p>1) Does the proposal appropriately address the stated purpose? Please see the general comment, below.</p> <p>2) Should the definition of “electronic signature” be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a)? Please see the general comment, below.</p> <p>3) Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided. If yes, please describe. See general comment, below.</p> <p>GENERAL COMMENTS: The proposal appropriately addresses the stated purpose and would positively impact the</p>	<p>The committee appreciates the commenter’s feedback on this proposal.</p> <p>The committee notes the commenter’s support for the proposal and appreciates the specific feedback</p>

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			<p>statewide child support program. First, by allowing electronic signatures on documents filed electronically in the appellate courts, the proposal recognizes the increased viability of electronic signatures in an era where business practices have increasingly become remote, and the physical presence of the signatories is less common, and often discouraged. This viability is particularly enhanced in appellate matters where there are more than two parties, as is frequently the case with child support-related appeals. Second, with the exception of certain organizational differences, the proposed changes to rules 8.70 and 8.75 align them with the parallel trial court rules, so the proposal promotes consistency between the forums. Lastly, the proposed changes add requisite clarity for situations when even non-parties must e-file documents in a pending appeal, which occasionally arise within the child support context. Altogether, the Department supports the proposal.</p> <p>Regarding the definition of “electronic signature,” while the Department does not have a strong opinion concerning the matter, the “Definitions” section under rule 8.70(c) is seemingly the most appropriate place to include it. Having a single rule articulating the definitions of terms used throughout the applicable article is generally desirable because it creates an obvious first place to search for definitions of terms, particularly for filers who are otherwise unfamiliar with the pertinent</p>	<p>on how the rule amendments would positively impact the statewide child support program.</p> <p>The committee appreciates the response to the question presented in the invitation to comment and has retained the definition in rule 8.70(c).</p>

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			<p>rules. Though filers more accustomed to the parallel trial court rules may expect to see the definition included in rule 8.75 just as it is included in rule 2.257(a), the next most conspicuous place to locate it would likely be within the rule that provides the definitions applicable to e-filing in appellate proceedings, so any resulting confusion would presumably be short-lived.</p> <p>Lastly, in appellate proceedings, the Department is represented by the Department of Justice, Office of the Attorney General. Since the Department does not itself practice before appellate courts, the Department has no comment on the third Request for Specific Comments.</p>	<p>No response required.</p>
4.	<p>California Lawyers Association; Committee on Appellate Courts, Litigation Section By Erin Smith Chair</p> <p>Saul Bercovitch Director of Governmental Affairs</p>	AM	<p>The Committee on Appellate Courts of the Litigation Section of the California Lawyers Association (“CAC”) submits the following comments on proposed Amended California Rule of Court, rules 8.70 and 8.75.</p> <p>The CAC consists of appellate practitioners and court staff, drawn from a wide range of practice areas, from across the state. As elaborated below, the CAC agrees with the purpose behind the rule change—that signature rules should evolve to accommodate rapid changes in the practice of law. By allowing parties to affix electronic signatures for certain submissions to the Court of Appeal, the Appellate Advisory Committee’s (“AAC”) proposed rules change</p>	<p>The committee thanks the commenter for providing feedback on this proposal.</p> <p>The committee notes the commenter’s support for updating electronic filing rules to provide for electronic signatures.</p>

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			<p>will promote efficiency and ease administrative burdens for attorneys and staff.</p> <p>But the CAC is concerned that the proposed language will cause confusion and uncertainty for practitioners, self-represented litigants, and legal assistants. The proposed language is likely to increase the number of inquiries and non-compliant submissions to the court, exacerbating appellate courts' already burdensome workload. In the comments below, the CAC offers suggestions on achieving greater clarity.</p> <p>Stated Purpose of Amending Rules 8.70 and 8.75</p> <p>The CAC shares the AAC's goal to liberalize the use of electronic signatures in appellate court submissions. In federal practice, the typewritten signature with the backslash has proliferated for documents submitted through the ECF system, and correspondingly, the "wet ink signature" has fallen into disuse. The advent of sophisticated electronic-signature programs such as DocuSign, with their added security features, have also changed consumer practices more broadly. Important legal documents, such as loan applications and real estate purchase agreements, are now routinely executed by way of an electronic signature.</p> <p>Even before 2020, these technological innovations have resulted in more remote work, including by attorneys. That trend was catalyzed</p>	<p>No response required.</p> <p>No response required.</p>

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			<p>by the COVID-19 pandemic, as California attorneys and their staff have largely shifted to working from home. Experts have predicted that remote and hybrid work arrangements will continue to grow going forward. Working from home presents a new set of logistical challenges. As members of the CAC can attest, the requirement to “retain a printed form of the document with the original signature” for electronically filed documents signed under penalty of perjury creates administrative burdens, particularly as the signatory and the legal assistant may both be working from home. The CAC therefore fully supports any rule that eschews requiring the physical presence of the signer or an exchange of mailed paper documents.</p> <p>But the CAC has concerns that the proposed rules do not go far enough in liberalizing the use of electronic signatures. Specifically, rather than stringent requirements on the form of electronic signature, the CAC recommends that the rules allow parties to use more streamlined electronic signatures (e.g., the typewritten “/s/” signature popular in federal court), as there is little risk of fraudulent signatures being used in appellate practice. Alternatively, if more stringent signature requirements are to be included for certain documents, the CAC has some concerns about the specific language proposed and provides suggestions on ways to achieve greater clarity in the proposed rules.</p>	<p>See response below.</p>

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			<p>Recommended Changes to Proposed Rules 8.70 and 8.75</p> <p>A. The CAC recommends a simple electronic signature requirement for all documents</p> <p>Proposed Rules 8.70 and 8.75 contemplate two different types of “electronic signature.” Proposed Rule 8.70(c)(10) defines an “electronic signature” broadly as “electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received or stored by electronic means” per Civil Code section 1633.2(h). This definition would seem to include, for example, the simple electronic signatures often used in federal court (“/s”).</p> <p>But Rule 8.75(a)(1) and (b)(2)(B) limit an acceptable “electronic signature” to a “digital signature” per Government Code section 16.5(a), or one that is “unique to the declarant, capable of verification, under the sole control of the declarant, and linked to data such that, if the data are changed, the electronic signature is invalidated.” This definition would seem to be limited to signatures obtained by sophisticated electronic-signature programs such as DocuSign. Under the proposed rules change, this more stringent type of electronic signature would be required for (1) documents signed under penalty of perjury (where filed by</p>	<p>The committee agrees that the proposed amendments describe two different types of electronic signature. The committee has added a definition for a “secure electronic signature” to rule 8.70 and uses the term in rule 8.75.</p> <p>The proposal has been modified to refer to this more stringent type of electronic signature as a secure electronic signature. This type of electronic signature is required for documents signed under penalty of perjury where the declarant is not the filer and documents that require multiple signatures.</p>

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			<p>someone other the signatory) and (2) documents with signatures from multiple parties, such as a stipulation.</p> <p>But the CAC doubts the second, more stringent signature type (a “digital signature”) is truly necessary in <i>any</i> scenario. In particular, the fact that attorneys receive electronic copies of documents filed through the TrueFiling system eliminates any realistic threat that anyone will file a document purporting to have the authorization of an attorney that has not actually authorized that filing.</p> <p>For example, a party who files a stipulation bearing the purported electronic “signature” of other parties will invariably have some other evidence (e.g., email correspondence) showing that the other parties indeed authorized the filing. By contrast, any attorney who receives an electronic copy of a stipulation they did not authorize but which nonetheless bears their electronic signature could (and would) immediately raise this issue with the court.</p> <p>Nor is it realistic to expect that an attorney’s staff will file documents in which the attorney purported to sign under penalty of perjury without securing the attorney’s express authorization to do so. And even if this did occur, the attorney—having again received notice of the unauthorized filing through TrueFiling—would be able to take corrective action.</p>	<p>The committee disagrees with eliminating the requirement of a secure electronic signature at this time. The committee concluded that the benefits of a secure electronic signature, with its additional verification requirements, outweigh those of a less secure procedure that places more reliance on an attorney or litigant to contest an unauthorized signature. However, as technology advances and the courts’ gain more experience with e-filing, alternate procedures may be warranted.</p> <p>See response above.</p>

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			<p>Thus, rather than require a signature with increased verification requirements, the CAC proposes that the rules instead require filers to certify that they have the express authorization to file the document on behalf of any attorneys who have signed thereto.</p> <p>So, for example, for stipulations among multiple parties, the rules should simply require the party filing the stipulation to include a statement on the filing that he/she/they received the other party's consent to sign on the latter's behalf. This would effectively mirror a local rule of the Federal District Court for the Central District of California that has been widely and successfully adopted by litigants for party stipulations. That rule, C.D. Cal. L.R. 5-4.3.4(a)(2)(i), reads as follows:</p> <p>[T]he signatures of all signatories may be indicated on the document with an "/s/," and the filer must attest on the signature page of the document that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing...</p> <p>In other words, the burdens on self-represented litigants, attorneys, and litigation assistant would be eased if the party filing a stipulation may simply: (1) obtain consent from the other party that the latter has agreed to a stipulation; and (2) attest that such consent was obtained.</p>	<p>The committee appreciates this suggestion and will retain it for future consideration.</p> <p>See response above.</p> <p>See response above.</p> <p>See response above.</p>

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			<p>Stipulations in appellate courts typically involve routine requests such as extensions of time to file a brief, and it would promote efficiency and cost-savings to minimize signature requirements. The experience of attorneys practicing before the Central District of California has shown this rule to work. And to guard against misrepresentations or foul play, the attestation requirement provides a strong deterrent for licensed attorneys.</p> <p>B. If digital signatures will be required in certain scenarios, the CAC recommends a reorganization of Proposed Rules 8.70 and 8.75 .</p> <p>The CAC perceives two ambiguities in the proposed versions of Rules 8.70 and 8.75 rule that could be cured by changes to the organizational structure of the rules.</p> <p>First, as noted above, the rules seem to contemplate two different types of “electronic signature.” The first type (defined in Rule 8.70(c)(1)) follows the definition of “electronic signature” in the Uniform Electronic Transactions Act, Civil Code section 1633.2(h). The second type (defined in 8.75(a)(1) and (b)(2)(B)) follows the requirements of a “digital signature” in Government Code section 16.5(a). As noted in the proposed Advisory Committee comment: “Rule 8.70 defines ‘electronic signature’ but not ‘digital signature.’ A digital signature is a type of electronic signature as</p>	<p>The committee agrees with the commenter and has added a new defined term for the electronic signature with heightened security requirements: a “secure electronic signature.”</p>

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			<p>defined in Government Code section 16.5(d). (Civ. Code, § 1633.2(h).)”</p> <p>The CAC believes it may be confusing to refer to both types of signatures as “electronic signatures” when their requirements vary so significantly. In addition, as proposed to be amended, the rules would define “electronic signature” and use but not define the term “digital signature” in Rule 8.75(c). Adding to potential confusion, Rule 8.75(c) would say: “A party or other person is not required to use a digital signature on an electronically filed document.” Because “digital signature” is not defined, it is not clear what is not required. Moreover, the proposed language in Rule 8.75(a)(1) and (b)(2)(B) follows the statutory requirements of a “digital signature” under Government Code section 16.5(a), and that type of electronic signature would be required under the specified circumstances.</p> <p>To the extent the rules will require different standards of signature verification depending on the document, the CAC would propose that the rules refer to these signatures by different names—such as an “electronic signature” or “digital signature”—and define <i>both</i> terms. Thus, for example, signatures that need not meet the requirements set forth in Rule 8.75(a)(1) and (b)(2)(B) would be called “electronic signatures,” while the signatures that must satisfy Rule 8.75(a)(1) and (b)(2)(B) would be called “digital signatures.” This change would</p>	<p>The committee agrees that reference to a digital signature, with no explanation or definition, is confusing and has removed this subdivision (circulated as rule 8.75(c)). The proposal no longer refers to a digital signature.</p> <p>The committee agrees with referring to the two different types of electronic signature with different names and has modified the proposal accordingly.</p>

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			<p>also require the removal of Rule 8.75(c), for the reasons discussed above.</p> <p>By offering separate definitions for each respective signature type, Rule 8.75 could then simply use the defined term for each signature type without having to repeat the definition of the acceptable signature type on each occasion where a signature type is discussed. Among other things, this would facilitate better organization of Rule 8.75, as discussed immediately below.</p> <p>Second, and relatedly, the CAC believes that organizing proposed Rule 8.75 into categories based on whether a document must be signed under penalty of perjury creates confusion as to when the more stringent signature type is required.</p> <p>Organizing the rule based on whether documents must be signed under penalty of perjury would have made sense if the more stringent signature type was only reserved for penalty-of-perjury situations. But Rule 8.75(b)(2) contemplates that when a document “requires the signatures of multiple parties,” it too must be signed with the more stringent signature even though it is not a document signed under penalty of perjury.</p> <p>Thus, rather than organize the rule based on whether documents must be signed under penalty of perjury, the CAC recommends that</p>	<p>The committee agrees and has used the defined term in rule 8.75.</p> <p>The committee appreciates this suggestion and will retain it for future consideration together with ITAC to maintain consistency in trial court and appellate court rules.</p> <p>See response above.</p> <p>See response above.</p>

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			<p>the rule be organized based on when a “digital signature” is (or is not) required. So, for example, subsection (a) of Rule 8.75 might simply list the situations in which a “digital signature” is required (i.e., (1) documents signed under penalty of perjury where the filer is someone other than the declarant, (2) documents that require the signatures of multiple parties). Subsection (b) could then specify that for all other documents except those listed in subsection (a), a simple “electronic signature” will suffice.</p> <p>Organizing the rule in this fashion would be easy and intuitive if the rules used different names for the two signature types contemplated by the proposed versions of Rule 8.70(c)(10), and Rule 8.75 (a)(1) and (b)(2)(B) (i.e., “electronic” versus “digital” signatures). Accordingly, creating labels for the two different signature types contemplated by the rules—and then organizing Rule 8.75 based on when the two different signature requirements apply—would significantly enhance the clarity of the rules as a whole.</p>	<p>See response above.</p>
5.	<p>Child Support Directors Association Judicial Council Forms Committee By Lisa Saporito Chair</p>	A	<p>The Child Support Directors Association Judicial Council Forms Committee (Committee) has reviewed the proposal identified above for potential impacts to the child support program, the local child support agencies (LCSA), our judicial partner, and our case participants. Specific feedback related to the provisions of the proposed legislation with potential impacts</p>	<p>The committee appreciates the commenter’s feedback on the proposal.</p>

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			<p>to the LCSA and its stakeholders is set forth below.</p> <p><u>REQUEST FOR SPECIFIC COMMENTS:</u></p> <p>1) Does the proposal appropriately address the stated purpose? Yes. The proposed revision to California Rules of Court rules 8.70 and 8.75 appropriately address its purpose to foster modern e-business practices, promote consistency in the rules and efficiency among stipulating parties, and reduce unnecessary transmission of paper documents by changing the rules to allow electronic signatures and to simplify the appellate procedures.</p> <p>2) Should the definition of “electronic signature” be added to rule 8.70(c) as presented, or to rule 8.75 as a new subdivision (a)? The electronic signature definition logically is placed in rule 8.70(c) along with the other definitions. Although this does not exactly mirror the recent changes to the trial court rules, it does make sense. That said, we do believe that the definition could have been appropriately placed in either rule 8.70(c) or rule 8.75 as a new subdivision (a).</p> <p>3) Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided? If yes, please describe. The proposal is not inconsistent</p>	<p>The committee notes the commenter’s support for the proposal.</p> <p>No further response required.</p> <p>No further response required.</p>

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			<p>with current practices for validating signatures and preserving evidence.</p> <p>Thank you for the opportunity to provide input, express our ideas, experiences, and concerns with respect to the proposed legislation.</p>	No further response required.
6.	<p>Court of Appeal, Third Appellate District By Colette M. Bruggman Assistant Clerk/Executive Officer</p>	AM	<p>Rule 8.70 Rule 8.70(c)(10) defines an electronic signature as “an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign a document or record created, generated, sent, communicated, received, or stored by electronic means.” It appears this language is from the ESIGN Act of 2000. It is unclear what an “electronic sound” is or how it would be presented in court operations. At a minimum, an explanation should be provided. Alternatively, if it has no practical application for court operations, it should probably be removed from the definition.</p> <p>Rules 8.70 and 8.75 The proposals for rules 8.70 and 8.75 include adding the language “other persons” to the scope of the rules to account for others who may be involved in a case but are not parties. “Other persons” is not defined anywhere in the rules of court and does not appear to be consistent with the current language of the rules. The addition of this language makes it appear that filings or submissions by non-parties is routine; however,</p>	<p>The committee notes the commenter’s support for the proposal if modified.</p> <p>The committee acknowledges that this aspect of the definition of an electronic signature may not currently be applicable in court operations. The committee declines to modify the definition at this time but will retain the suggestions for future consideration with ITAC. In the meantime, the committee believes it best to maintain consistency with the trial court rules and Civil Code section 1633.2.</p> <p>The proposed addition of “other persons” in these rules is based on the trial court rules, which were amended to include “other persons” based on Code of Civil Procedure section 1010.6. Instances of “other persons” properly filing or submitting electronic documents are more common in trial court proceedings than appellate court proceedings. However, as noted in the comments from CDCSS, nonparties involved in juvenile</p>

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			<p>filings or submissions by non-parties are not routinely allowed. Currently, only two rules allow for filing of documents by non-parties, namely: rule 8.200(c) governing filing of amicus curiae briefs and rule 8.1120(a)(1) governing requests to publish. Any other submissions by non-parties are received or filed by permission of the court only. The addition of this language is too vague to be helpful and places an operational burden on the Clerk’s Office in dealing with filings submitted by “other persons.”</p> <p>As an example, from time to time we get what I will refer to as a “lobbying effort,” wherein non-parties write to us to try to influence the process or outcome of a case. In one case, we received 21 letters from victims in a criminal case, requesting the case be fast-tracked. Adding “other persons” to the rules makes it appear that submissions such as these are properly received or filed in a case. They are not proper submissions, and it is up to the discretion of the court how these submissions will be handled. Sometimes they will be received, but more often, they will be returned.</p> <p>Suggestions: Remove the language “other persons” from these rules. Add a definition of “other persons” to rule 8.10 that limits who “other persons” are for purposes of submitting documents in a case as proscribed in the rules of court.</p>	<p>cases on appeal are another example of “other persons” who may properly submit documents. In the committee’s view, the references to “other persons” in the rule are helpful and appropriate.</p> <p>See response above.</p>

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7.	Meechan, Rosenthal & Karpilow, P.C. By Rebecca Slay Paralegal	A	Yes! Let's make it easier for individuals to access their rights!!!	The committee notes the commenter's support for the proposal.
8.	Orange County Bar Association By Larisa M. Dinsmoor President	A	<p>The OCBA provides the following responses to the Request for Specific Comments:</p> <ol style="list-style-type: none"> 1. The proposal addresses the stated purpose. 2. The definition of "electronic signature" should remain in Section 8.70. 3. The procedure described in proposed rule 8.75(b)(2)(A) regarding documents with multiple signatures, such as stipulations, does not comport with current practice. Current practice regarding such documents is often for the parties' counsel to email each other regarding a stipulation. Once the parties' counsel agree to the substance and language of the stipulation, the filing party's counsel will inquire whether he/she has permission from the opposing party's counsel to "electronically sign" on the opposing counsel's behalf. Opposing counsel will respond via email confirming the filing party's counsel has permission. The filing party's counsel will then use a simple "/s/ Opposing Counsel" on the signature line, representing to the Court that both parties' counsel have agreed to the stipulation. The procedure in Rule 8.75(b)(2)(A) would still require the Opposing Counsel to either sign the stipulation manually and send it back, or sign it via electronic signature with a 	<p>The committee notes the commenter's support for the proposal.</p> <p>No further response required.</p> <p>No further response required.</p> <p>The committee appreciates this feedback and will retain it for future consideration. Any such changes for better alignment with current practice would best be considered together with ITAC as part of a joint project for both trial court and appellate court rules.</p>

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	Commenter	Position	Comment	Draft Committee Response
			<p>digital certificate. This is a more onerous process than is used in the trial court. Further, any doubts about whether the opposing counsel authorized the electronic signature by the filing party’s counsel can be resolved by simple production of the email correspondence authorizing the filing.</p>	
9.	<p>Superior Court of California, County of San Diego By Mike Roddy Executive Officer</p>	A	<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? Yes. • Should the definition of “electronic signature” be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a) The definition of “electronic signature” should remain as presented within rule 8.70(c). In addition, it is recommended that the following subdivision header in rule 8.75 be revised for clarity as follows: (d)(c) Digital signature not required • Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them? If not, should alternative procedures be provided? If yes, please describe? Yes. It is the practice of the appeals staff to check for signatures for cases in which electronic filing is currently permitted in San Diego Superior Court (unlimited civil, probate, limited civil up to certification of the appeal record, and family). 	<p>The committee notes the commenter’s support for the proposal and appreciates the responses to the request for specific comments.</p> <p>No response required.</p> <p>The committee has removed the subdivision regarding digital signatures from the rule.</p> <p>No further response required.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR21-01

Appellate Procedure: Electronic Signatures (Amend Cal. Rules of Court, rules 8.70 and 8.75)

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

	Commenter	Position	Comment	Draft Committee Response
			<ul style="list-style-type: none"> • Would the proposal provide cost savings? If so, please quantify. No. • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? Staff in the business office would need to be trained. It is difficult to quantify the amount of training, but it should not be overwhelming. The information would need to be incorporated into written procedures. • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, for areas that already accept e-filing. • How well would this proposal work in courts of different sizes? There should be no disparate impact between courts of different sizes. 	<p>No further response required.</p> <p>The committee appreciates this feedback on implementation requirements for the court.</p> <p>No further response required.</p> <p>No further response required.</p>
10.	<p>TCPJAC/CEAC Joint Rules Subcommittee (JRS)</p> <p>On behalf of:</p>	A	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> • Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, 	<p>The committee appreciates these comments regarding the impact of the proposal on court operations and has noted them in the Judicial Council report.</p>

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Commenter	Position	Comment	Draft Committee Response
<p>Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC)</p>		<p>Jury Plus/ACS, etc.). There is a potential for impact to automated systems in adapting/modifying existing configurations.</p> <ul style="list-style-type: none"> • Results in additional training, which requires the commitment of staff time and court resources. Potential for some training around requirements of the new rules as proposed but not significant. <p>Request for Specific Comments Does the proposal appropriately address the stated purpose?</p> <ul style="list-style-type: none"> • 8.75(a)(1) defines the use of electronic signatures, and (a)(2) deals with wet signatures. However, 8.75(b)(2)(A) provides further requirements for wet signatures, and (b)(2)(B) with electronic signatures. Although the stated purpose is satisfied with these proposed revisions, the change in ordering of the provisions between the two subsections may lead to confusion. • 8.75(a)(1) requires the signature to be under the “sole control” of the declarant. This may present an implementation challenge, as many attorneys give signing authority to other attorneys on a case, as well as personnel. Similarly, many litigants give their attorneys signing authority. Suggest “sole authority” may be a more feasible and efficient option allowing the signator to authorize the esigning. 	<p>See response above.</p> <p>The committee has reordered the provisions in rule 8.75(b)(2)(A) and (B) to be parallel, i.e., electronic signatures are addressed before wet signatures.</p> <p>The committee appreciates the feedback on this aspect of the secure electronic signature. The definition, including the requirement of “sole control,” is based on the trial court rule, which in turn is based on Government Code section 16.5(a). The committee declines at this time to modify the definition but will retain it for consideration with ITAC to maintain consistency in the rules.</p>

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

	Commenter	Position	Comment	Draft Committee Response
			<p>Should the definition of “electronic signature” be added to rule 8.70(c) as presented, or to rule 8.75 as new subdivision (a)?</p> <ul style="list-style-type: none"> • 8.70 is helpful to set the standard. <p>Does the procedure in rule 8.75(b)(2)(A) for documents with multiple signatures reflect current practice for validating those signatures and preserving evidence of them?</p> <ul style="list-style-type: none"> • Yes. <p>Would the proposal provide cost savings?</p> <ul style="list-style-type: none"> • Yes, for the litigants filing, who spend substantial time securing appropriate originals. <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <ul style="list-style-type: none"> • Yes. <p>How well would this proposal work in courts of different sizes?</p> <ul style="list-style-type: none"> • Assuming case management impact question is not substantial, this should work well. 	<p>No further response required.</p> <p>No further response required.</p> <p>The committee has noted this response in the report to the Judicial Council.</p> <p>No further response required.</p> <p>No further response required.</p>

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