JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

Title
Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project)

Rules, Forms, Standards, or Statutes Affected
Amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392

Recommended by
Information Technology Advisory Committee
Hon. Sheila Hanson, Chair
Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair
Family and Juvenile Law Advisory Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Agenda Item Type
Action Required

Effective Date
January 1, 2017

Date of Report
October 27, 2016

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Executive Summary

The Information Technology Advisory Committee recommends amending various rules in titles 2, 3, and 5 of the California Rules of Court as part of phase II of the Rules Modernization Project. These amendments are substantive changes to the rules that are intended to promote electronic filing, electronic service, and modern e-business practices. The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee also recommend the amendments to the rules in their respective subject-matter areas.

Recommendation

The Information Technology Advisory Committee (ITAC) recommends that the Judicial Council, effective January 1, 2017, amend Cal. Rules of Court, rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392.

The rule amendments in titles 2 and 3 have been reviewed and recommended by ITAC and the Civil and Small Claims Advisory Committee; and those in title 5 have been reviewed and recommended by ITAC and the Family and Juvenile Law Advisory Committee.

The text of the amended rules is attached at pages 11–25.

Previous Council Action

The Information Technology Advisory Committee is leading the Rules Modernization Project, a multiyear effort to comprehensively review and modernize the California Rules of Court so that they will be consistent with and foster modern e-business practices. To ensure that each title is revised in view of any statutory requirements and policy concerns unique to that area of law, ITAC is coordinating with other advisory committees with relevant subject-matter expertise, including the Civil and Small Claims Advisory Committee (CSCAC) and the Family and Juvenile Law Advisory Committee (FJLAC).

The Rules Modernization Project is being carried out in two phases. Phase I culminated in the Judicial Council's adoption of an initial round of technical rule amendments to address language in the rules that was incompatible with the current statutes and rules governing electronic filing and service, and with e-business practices in general. This rules proposal is part of phase II, which involves a more in-depth examination of any statutes and rules that may hinder electronic filing, electronic service, and modern e-business practices.

Rationale for Recommendation

This proposal includes new formatting provisions in the rules for electronic documents. It also includes amendments to the various rules identified by the committees during phase I as requiring a substantive change, as well as technical amendments that were missed during phase I.

Formatting of electronically filed documents

Rule 2.256(b) states the formatting requirements for documents that are electronically filed in the trial courts. This proposal would add references to rule 2.256(b) in rules 2.100, 2.114, and 2.140 to clarify that the formatting requirements in rule 2.256(b) apply to electronically filed "papers," exhibits, and forms. Minor technical changes would also be made to formatting rules 2.103 and 2.105.

Text-searchable electronic documents. This proposal would amend rule 2.256(b) to provide that an electronically filed document must be text searchable when technologically feasible without

impairing the document's image. This requirement would apply broadly to all electronically filed documents, including "papers," exhibits, and forms.[1]

Although both ITAC and CSCAC agreed that electronically filed "papers" should be text searchable, the committees initially split regarding whether to extend this requirement to electronically filed exhibits and forms. Whereas CSCAC recommended that an advisory committee comment to rule 2.256(b) state a preference for text searchable exhibits and forms for the convenience of the court and the parties, ITAC preferred requiring that electronically filed exhibits and forms be text searchable "when feasible."

After further discussion, the two committees were able to resolve their differences by providing guidance on the intended meaning of the term "feasible." They recommended requiring that all electronically filed documents be text searchable "when technologically feasible without impairment of the document's image." They also decided to provide further guidance in an advisory committee comment, which would specify that "[t]he term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."

The requirement that "papers" be text searchable is intended to discourage litigants from printing and scanning "papers" before electronically filing them, which creates documents that are not text searchable. Because converting from a document created with word processing software to portable document format (PDF) may result in a slight reduction or enlargement of font size in the document, this proposal would amend rule 2.118 by adding a new subparagraph (a)(3) to provide that a clerk may not reject papers for filing solely because "[t]he font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF."

Electronic bookmarks for exhibits. This proposal would amend rule 3.1110(f) to require that electronic exhibits contain electronic bookmarks, unless they are submitted by a self-represented litigant. The electronic bookmarks must have (1) links to the first page of each exhibit and (2) titles that identify the exhibit number or letter and briefly describe the exhibit. This proposal would also add an Advisory Committee Comment that would state that, "[u]nder current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free." In addition, the proposal would amend rule 3.1113(i) to require electronic bookmarking where authorities or cases are lodged in electronic form.

[1] As defined in rule 2.3(2), the term "papers" includes "all documents, except exhibits and copies of exhibits that are offered for filing in any case, but does not include Judicial Council and local court forms, records on appeal in limited civil cases, or briefs filed in appellate divisions."

Page numbering

This proposal would amend the rules governing pagination for "papers," motion documents, and motion memoranda—rules 2.109, 3.1110(c), and 3.1113(h)—to provide that page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3) and that the page number may be suppressed and need not appear on the first page. These amendments recognize that judicial officers find it easier to navigate electronic documents when the page number in the footer matches the page number of the electronic document. To provide for consistency, this method of page numbering would apply to both electronic and paper documents, and, as a result, the pages of tables of contents in memoranda will no longer be paginated using lowercase Roman numerals.[2]

To ensure that the amendment to rule 3.1113(h) would not alter the number of pages allowed for memoranda, this proposal would also amend rule 3.1113(d) by providing that the caption page and the notice of motion and motion are not counted in determining whether a memorandum exceeds the page limit. Subdivision (d) already provides that exhibits, declarations, attachments, the table of contents, the table of authorities, and the proof of service are not counted.

Proof of electronic service

This proposal would amend rule 2.251(i) to conform the requirements for proof of electronic service to the statutes and rules governing electronic service. It would also eliminate the requirement that the person completing the proof of electronic service state the time of electronic service.

Electronic service by a party. In stating the requirements for proof of electronic service, rule 2.251(i) incorporates the requirements for proof of service by mail in Code of Civil Procedure section 1013a, subject to several exceptions. Section 1013a requires that proof of service by mail be made by affidavit or certificate showing that the "the person making the service" is "not a party to the cause," and subdivision (i) of rule 2.251 does not currently provide an exception to this requirement. However, subdivision (e) of rule 2.251 and the statute governing electronic service expressly allow for electronic service by a party. (See Code Civ. Proc., § 1010.6(a)(1)(A).) To eliminate this internal inconsistency, this proposal would add another exception to rule 2.251(i) to recognize that parties may electronically serve documents.

Time of electronic service. This proposal would amend rule 2.251(i)(1) to remove the requirement that the proof of electronic service state the time of electronic service. In practice, this requirement has proved unworkable: the person completing the proof of electronic service will not know the precise time of electronic service until after the document is served. Because this requirement also appears in the proof of service for fax filing, this proposal would make the same change to rule 2.306(h)(1).

[2] The Information Technology Advisory Committee and the Appellate Advisory Committee have recommended similar amendments to the pagination requirements in rules 8.204(b) and 8.74(b) for appellate briefs and documents that are electronically filed in the appellate courts.

Paper courtesy copies

At present, the rules are silent as to whether paper courtesy copies may be required when documents are filed electronically. The proposal that was circulated for public comment would have added add a new subdivision (i) to rule 2.252 to address paper courtesy copies. That subdivision would have provided that "[a] judge may request that electronic filers submit paper courtesy copies of an electronically filed document." However, after reviewing the comments, CSCAC and ITAC were unable to agree whether paper courtesy copies should be required not only upon the request of a judge but also by local rule. Whereas CSCAC recommended the circulated version that provided only that a judge may request that electronic filers submit paper courtesy copies, ITAC recommended adding that "paper courtesy copies may be required by local rule."

The committees' differences on the courtesy copy question were forwarded on to an ad hoc joint group comprised of members from both committees. The working group members discussed the courtesy copy issues in detail but were unable to resolve their differences. In the end, most of them supported not going forward with the new rule provision at this time. The courtesy copy issue was then forwarded on to Judicial Council Technology Committee (JCTC) and the Rules and Projects Committee (RUPRO) for their consideration. When the JCTC members considered the courtesy copy issue, they concluded that adding subdivision (i) on courtesy copies was premature, that the provision should not be included in the current rules proposal, and that the courtesy copy issue could be addressed in a future rules cycle after the judicial branch has had more experience with e-filing practices. RUPRO agreed and recommended that subdivision (i) be removed from the rules proposal.

"Return" of lodged records

During phase I of the Rules Modernization Project, the Judicial Council amended rules 2.551, 2.577, and 3.1302 to provide for the return of materials lodged in electronic form. The advisory committees and commentators raised concerns that the rule language regarding the return of electronic materials did not necessarily mean that the court would be required to delete the electronic record maintained in its document management system. Accordingly, the committees decided to revisit these rules this year and provide for a new process that addresses these concerns.

The purpose of amending rules 2.551(b)(6) and 2.577(d)(4) is to modernize the process for returning the lodged record to accommodate electronic records. The intent is not to change the basic underlying procedure: when a motion to seal is denied, rules 2.551(b)(6) and 2.577(d)(4) provide for the return of the lodged record to the moving party or, in the alternative, allow the moving party to notify the court within 10 days of the order denying the motion that the record is to be filed unsealed.

To better reflect this purpose, the committees decided to revise the amendments to rules 2.551(b)(6) and 2.577(d)(4) to provide that the moving party has 10 days following an order denying a motion or application to seal—unless ordered otherwise by the court—to notify the

court that the lodged record is to be filed unsealed. The clerk must unseal and file the record upon receiving the notification. If the clerk does not receive notification within 10 days of the order, the clerk must return the lodged records if in paper form or permanently delete the lodged records if in electronic form. Based on comments received in response to the invitation to comment, the committees decided not to require that courts send a separate notice of destruction before destroying electronic lodged records. The court order denying the sealing motion was thought to provide sufficient notice to the moving party.

The committees also revised rule 3.1302(b) to provide that courts may continue to maintain other lodged materials; however, if the court elects not to maintain them, they must be returned by mail if in paper form or permanently deleted after notifying the party lodging the material if in electronic form. The committees decided to require that a notice be sent before destruction of any electronic lodged records under rule 3.1302 because the submitting party would not otherwise have notice of the destruction.

Additional technical amendments to the rules

Lastly, this proposal would make additional technical amendments to the rules that were not identified during phase I of the Rules Modernization Project. These technical changes include the following:

- Amending rule 2.104 to clarify that the font size must be not smaller than 12 points on papers if they are filed electronically or on paper;
- Amending rule 2.110 to refer to "font" instead of "type";
- Amending rule 2.111(1) to delete the language "if available" in reference to fax and e-mail addresses on the first page of papers;
- Amending rule 2.551(b)(3)(B) to replace language related to paper documents with language that is inclusive of electronic documents;
- Amending rules 2.551(f) and 2.577(g) to provide that if sealed records are in electronic form, the court must establish appropriate access controls to ensure that only authorized persons may access them;
- Amending rule 3.250(b) to describe the process for retaining the originals of papers that are not filed where the originals are in electronic form;
- Amending rule 3.751 to recognize that a party may agree to electronic service, or a court may require electronic service by local rule or court order, under rule 2.251 in complex civil cases;
- Amending rule 3.823(d) to cross-reference Code of Civil Procedure sections 1013 and 1010.6;
- Amending rule 3.1306 to provide that a party who requests judicial notice of material in electronic form must make arrangements to have it electronically accessible to the court at the time of the hearing;
- Amending rule 3.1362 to recognize that an attorney requesting to be relieved as counsel may serve notice of the motion, the declaration, and the proposed order by electronic means, subject to certain safeguards;

- Amending rule 5.66 to recognize that the proof of service of a response to a petition or complaint may be on *Proof of Electronic Service* (form POS-050/EFS-050);
- Amending rules 5.380(c), 5.390(e), 5.392(b), (d), and (f) to replace the term "mail" and "mailing" with "serve" and "serving"; and
- Amending rule 5.390(e) to recognize that a clerk may file a certificate of electronic service.

Comments, Alternatives Considered, and Policy Implications

This rules proposal circulated for public comment during the spring 2016 cycle. Seven comments were submitted in response to the invitation to comment; two agreed with the proposal, three agreed with the proposal if modified, and two did not indicate their position. None of the comments addressed the amendments in title 5. The specific responses from ITAC and CSCAC to each comment are available in the attached comment chart at pages 27–58.

ITAC and CSCAC considered various alternatives in proposing rule amendments to titles 2 and 3, including whether electronically filed exhibits and forms should be text searchable, whether the rules should allow for paper courtesy copies, and whether self-represented litigants should be exempt from all or some of the new electronic requirements. The invitation to comment requested specific comment on several of these alternatives.

Text searchability of electronically filed documents

Several commentators expressed concerns if the rules were amended to require that electronically filed exhibits must be text searchable. These concerns included the difficulties in applying OCR software to voluminous and poorly reproduced exhibits and the possible expense of obtaining OCR software of sufficient quality.

After reviewing the comments, ITAC and CSCAC initially split as to whether electronically filed exhibits and forms should be text searchable. Whereas CSCAC recommended that rule 2.256(b) require that only electronically filed "papers" be text searchable, ITAC preferred extending this requirement to electronically filed exhibits and forms "when feasible." CSCAC would have added an advisory committee comment to state a preference for text-searchable exhibits and forms for the convenience of the court and the parties, but would not have made text searchability a requirement for these types of documents.

In light of public comments and further committee discussion, the committees ultimately agreed to recommend that electronically filed documents, including exhibits and forms, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance, the committees also recommended adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."

Paper courtesy copies of electronically filed documents

Commentators also responded to the request for comment on the proposed new rule on courtesy copies. As circulated, the proposed amendment to rule 2.252(i) would have required paper courtesy copies upon request of the judge.

Several commentators appreciated the flexibility built into the circulated rule and thought it would ultimately promote the transition to paperless case environments. One commentator questioned allowing for courtesy copies because they eliminate the primary benefit of electronic filing for litigants: the time and expense saved by not delivering paper copies to the courthouse.

Another commentator preferred omitting reference to courtesy copies from the rules or, in the alternative, also allowing for courtesy copies by local rule. This commentator reflected that the subject of local courtesy copies has been left to judicial discretion or local rule thus far and emphasized the importance of continuing to allow for both individual and local options to provide for flexibility in the early stages of implementing electronic filing in local courts.

As discussed earlier in this report, ITAC and CSCAC were unable to reach an agreement in their recommendations for a new rule on paper courtesy copies. Whereas CSCAC recommended that rule 2.252(i) provide only that "[a] judge may request that electronic filers submit paper courtesy copies of an electronically filed document," ITAC preferred adding "or paper courtesy copies may be required by local rule."

In support of its recommendation, CSCAC reasoned that requiring paper courtesy copies only upon request by a judge would provide for flexibility while also promoting the transition to a paperless case environment. If local rules on paper courtesy copies were allowed, judges would receive paper courtesy copies under a local rule even if they did not want them, resulting in unnecessary expense for litigants and the waste of natural resources. Alternatively, disallowing local rules on paper courtesy copies would permit those judges who are ready to transition to a paperless case environment to do so without being hampered by a local rule. Each judge would control how the request is communicated to the parties, including, for example, making the request in case management orders.

In support of its recommendation, ITAC reasoned that requiring paper courtesy copies, not only upon request of the judge but also by local rule, would give autonomy to local courts to decide how best to transition to electronic filing. Local courts could determine whether paper courtesy copies should always be provided for certain types of cases, such as summary judgment motions. Uniformity might be especially helpful in master calendar courts where judges would need to find some means other than a case management order to convey their request for courtesy copies to the parties. Uniformity would also assist courts, especially larger courts, as they transition to new electronic filing systems by providing for clarity in their communications with the bar and the public.

In the end, after further consideration by a joint working group from both advisory committees and review by JCTC [and RUPRO], agreement was reached that it would be premature to add new subdivision (i) on courtesy copies to rule 2.252 at this time, that the provision should not be included in the current rules proposal, and that the courtesy copy issue may be addressed in a future rules cycle after the judicial branch has had more experience with e-filing practices.

Self-represented litigants

Lastly, several commentators questioned the balance struck by the committees with respect to self-represented litigants. One requested that self-represented, disabled, and low-to-moderate-income litigants be exempted from the requirement that electronically filed documents be text searchable and that disabled and low-to-moderate-income litigants be exempted from the electronic bookmarking requirement.

In declining to pursue these recommendations, ITAC and CSCAC took the following points under consideration: (1) word processing software readily converts documents to PDF with no extra expense and minimal effort; (2) many electronic filing service providers convert documents from word processing format to PDF as part of their services; (3) most scanners are designed to apply OCR software during the scanning process; (4) self-represented litigants may always opt out of electronic filing and file on paper; (5) open source electronic bookmarking software is available for free; (6) competent attorneys could be expected to know or learn how to apply electronic bookmarks; (7) the time spent applying electronic bookmarks should be no more than the time required to tab paper exhibits; and (8) disabled litigants may request reasonable accommodations under the Americans with Disabilities Act.

Another commentator questioned why self-represented litigants were exempt from the electronic bookmarking requirement. However, with a view to promoting both electronic filing and access to the courts, the committees concluded that the electronic bookmarking requirement would be too burdensome for self-represented litigants; it requires downloading additional software and possessing certain technical know-how. Because self-represented litigants may opt out of electronic filing entirely, the committees preferred to lower potential barriers to electronic filing.

Implementation Requirements, Costs, and Operational Impacts

The committees expect that the amendments would ultimately result in efficiency gains and cost savings for the courts at minimal expense, if any, to litigants.

Requiring that electronically filed documents be text searchable would assist judicial officers and research attorneys. Although courts may incur additional expense for clerk review of filings to ensure text searchability, the requirement will likely result in overall savings from avoiding the significant cost and delay of applying OCR software to electronically filed documents. Litigants may readily convert “papers” created by word processing software free of additional charge to text-searchable PDFs. Generating text-searchable exhibits may require the application of OCR software, a common feature included in many scanners. The committees decided that the added benefits of text searchability to the courts outweighed the costs to the litigants.

Electronic bookmarks will facilitate and expedite the review of electronic exhibits by judicial officers and research attorneys. Adding electronic bookmarks to electronic exhibits would result in no additional costs to litigants because open-source software is available. Electronic bookmarks are also cheaper and less time intensive to apply than tabbing or separating paper exhibits. Because self-represented parties are exempt from the bookmarking requirement, it would not negatively affect them.

The notice requirement in rule 3.1302(b) for lodged electronic materials may result in costs for courts, but courts can avoid those costs by retaining and not deleting the lodged materials. Notice is required only if courts elect to delete electronic lodged materials.

Attachments and Links

1. Cal. Rules of Court, rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392, at pages 11–25
2. Chart of comments, at pages 26–57

Rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392 of the California Rules of Court are amended, effective January 1, 2017, to read:

Rule 2.100. Form and format of papers presented for filing in the trial courts

(a)–(b) * * *

(c) Electronic format of papers

Papers that are submitted or filed electronically must meet the requirements in rule 2.256(b).

Rule 2.103. Size, quality, and color of papers

All papers filed must be 8½ by 11 inches. All papers not filed electronically must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight.

Rule 2.104. ~~Printing;~~ Font size; printing

Unless otherwise specified in these rules, all papers filed must be prepared using a font size not smaller than 12 points. All papers not filed electronically must be printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing ~~in a font not smaller than 12 points~~.

Rule 2.105. Font style

The font style must be essentially equivalent to Courier, Times New Roman, or Arial.

Rule 2.109. Page numbering

Each page must be numbered consecutively at the bottom unless a rule provides otherwise for a particular type of document. The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

Rule 2.110. Footer

(a)–(b) * * *

(c) ~~Type~~ Font size

The title of the paper in the footer must be in at least 10-point ~~type~~ font.

Rule 2.111. Format of first page

The first page of each paper must be in the following form:

(1) In the space commencing 1 inch from the top of the page with line 1, to the left of the center of the page, the name, office address or, if none, residence address or mailing address (if different), telephone number, fax number and e-mail address ~~(if available)~~, and State Bar membership number of the attorney for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person. The inclusion of a fax number or e-mail address on any document does not constitute consent to service by fax or e-mail unless otherwise provided by law.

(2)–(11) * * *

Rule 2.114. Exhibits

Exhibits submitted with papers not filed electronically may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to computer-processed materials in legibility and permanency of image. Exhibits submitted with papers filed electronically must meet the requirements in rule 2.256(b).

Rule 2.118. Acceptance of papers for filing

(a) Papers not in compliance

The clerk of the court must not accept for filing or file any papers that do not comply with the rules in this chapter, except the clerk must not reject a paper for filing solely on the ground that:

(1) It is handwritten or hand-printed; ~~or~~

(2) The handwriting or hand printing on the paper is in a color other than black or blue-black~~.~~; or

(3) The font size is not exactly the point size required by rules 2.104 and 2.110(c) on papers submitted electronically in portable document format (PDF). Minimal variation in font size may result from converting a document created using word processing software to PDF.

(b)–(c) * * *

Rule 2.140. Judicial Council forms

Judicial Council forms are governed by the rules in this chapter and chapter 4 of title 1. Electronic Judicial Council forms must meet the requirements in rule 2.256.

Rule 2.251. Electronic service

(a)–(h) * * *

(i) Proof of service

(1) Proof of electronic service may be by any of the methods provided in Code of Civil Procedure section 1013a, ~~except that~~ with the following exceptions:

(A) The proof of electronic service does not need to state that the person making the service is not a party to the case.

(B) The proof of electronic service must state:

~~(A)~~ (i) The electronic service address of the person making the service, in addition to that person's residence or business address;

~~(B)~~ (ii) The date ~~and time~~ of the electronic service, instead of the date and place of deposit in the mail;

~~(C)~~ (iii) The name and electronic service address of the person served, in place of that person's name and address as shown on the envelope; and

~~(D)~~ (iv) That the document was served electronically, in place of the statement that the envelope was sealed and deposited in the mail with postage fully prepaid.

(2) * * *

(3) Under rule 3.1300(c), proof of electronic service of the moving papers must be filed at least five court days before the hearing.

(4) * * *

**(j) * * *

Rule 2.256. Responsibilities of electronic filer

(a) * * *

(b) Format of documents to be filed electronically

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

(1)–(2) * * *

(3) The document must be text searchable when technologically feasible without impairment of the document's image.

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

Advisory Committee Comment

Subdivision (b)(3). The term "technologically feasible" does not require more than the application of standard, commercially available optical character recognition (OCR) software.

Rule 2.306. Service of papers by fax transmission

(a)–(g) * * *

(h) Proof of service by fax

Proof of service by fax may be made by any of the methods provided in Code of Civil Procedure section 1013(a), except that:

(1) The ~~time,~~ date~~,~~ and sending fax machine telephone number must be used instead of the date and place of deposit in the mail;

(2)–(5) * * *

Rule 2.551. Procedures for filing records under seal

(a) * * *

(b) Motion or application to seal a record

(1)–(2) * * *

(3) *Procedure for party not intending to file motion or application*

(A) * * *

(B) If the party that produced the documents and was served with the notice under (A)(iii) fails to file a motion or an application to seal the records within 10 days or to obtain a court order extending the time to file such a motion or an application, the clerk must promptly ~~remove~~ transfer all the documents in (A)(i) from the envelope, container, or secure electronic file ~~where they are located and place them in~~ to the public file. If the party files a motion or an application to seal within 10 days or such later time as the court has ordered, these documents are to remain conditionally under seal until the court rules on the motion or application and thereafter are to be filed as ordered by the court.

(4)–(5) * * *

(6) *Return of lodged record*

If the court denies the motion or application to seal, ~~the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.~~ the

moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form.

(c)–(d) * * *

(e) Order

(1) If the court grants an order sealing a record and if the sealed record is in paper format, the clerk must substitute on the envelope or container for the label required by (d)(2) a label prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE),*" and must replace the cover sheet required by (d)(3) with a filed-endorsed copy of the court's order. If the sealed record is in ~~an~~ electronic form~~at~~, the clerk must file the court's order, ~~store~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(2)–(4) * * *

(f) Custody of sealed records

Sealed records must be securely filed and kept separate from the public file in the case. If the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

(g)–(h) * * *

Rule 2.577. Procedures for filing confidential name change records under seal

(a) * * *

(b) Application to file records in confidential name change proceedings under seal

An application by a confidential name change petitioner to file records under seal must be filed at the time the petition for name change is submitted to the court. The application must be made on the *Application to File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home)* (form NC-410) and be accompanied by a *Declaration in Support of Application to*

File Documents Under Seal in Name Change Proceeding Under Address Confidentiality Program (Safe at Home) (form NC-420), containing facts sufficient to justify the sealing.

(c) * * *

(d) Procedure for lodging of petition for name change

(1)–(3) * * *

(4) If the court denies the application to seal, ~~the clerk must return the lodged record to the petitioner and must not place it in the case file unless the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed.~~ the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form.

(e) * * *

(f) Order

(1)–(2) * * *

(3) For petitions transmitted in paper form, if the court grants an order sealing a record, the clerk must strike out the notation required by (d)(2) on the *Confidential Cover Sheet* that the matter is filed "CONDITIONALLY UNDER SEAL," add a notation to that sheet prominently stating "SEALED BY ORDER OF THE COURT ON *(DATE)*," and file the documents under seal. For petitions transmitted electronically, the clerk must file the court's order, ~~store~~ maintain the record ordered sealed in a secure manner, and clearly identify the record as sealed by court order on a specified date.

(4)–(5) * * *

(g) Custody of sealed records

Sealed records must be securely filed and kept separate from the public file in the case. If the sealed records are in electronic form, appropriate access controls must be established to ensure that only authorized persons may access the sealed records.

(h) * * *

Rule 3.250. Limitations on the filing of papers

(a) * * *

(b) Retaining originals of papers not filed

(1) Unless the paper served is a response, the party who serves a paper listed in (a) must retain the original with the original proof of service affixed. If served electronically under rule 2.251, the proof of electronic service must meet the requirements in rule 2.251(i).

(2) The original of a response must be served, and it must be retained by the person upon whom it is served.

(3) An original must be retained under (1) or (2) in the paper or electronic form in which it was created or received.

(4) All original papers must be retained until six months after final disposition of the case, unless the court on motion of any party and for good cause shown orders the original papers preserved for a longer period.

(c) * * *

Rule 3.751. Electronic service

Parties may consent to electronic service, or the court may require electronic service by local rule or court order, under rule 2.251. The court may provide in a case management order that documents filed electronically in a central electronic depository available to all parties are deemed served on all parties.

Rule 3.823. Rules of evidence at arbitration hearing

(a)–(c) * * *

(d) Delivery of documents

For purposes of this rule, "delivery" of a document or notice may be accomplished manually, by electronic means under Code of Civil Procedure section 1010.6 and rule 2.251, or ~~by mail~~ in the manner provided by Code of Civil Procedure section 1013. If service is by electronic means, the times prescribed in this rule for delivery of documents, notices, and demands are increased as provided by Code of Civil Procedure section 1010.6. ~~by two days.~~ If service is in the manner provided by ~~mail~~ Code of Civil Procedure section 1013, the times prescribed in this rule are increased as provided by ~~five days~~ that section.

Rule 3.1110. General format

(a)–(b) * * *

(c) Pagination of documents

Documents ~~bound together~~ must be consecutively paginated. The page numbering must begin with the first page and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

(d)–(e) * * *

(f) Format of exhibits

(1) An index of exhibits must be provided. The index must briefly describe the exhibit and identify the exhibit number or letter and page number.

(2) Pages from a single deposition must be designated as a single exhibit.

(3) Each paper exhibit must be separated by a hard 8½ x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. ~~An index to exhibits must be provided. Pages from a single deposition and associated exhibits must be designated as a single exhibit.~~

(4) Electronic exhibits must meet the requirements in rule 2.256(b). Unless they are submitted by a self-represented party, electronic exhibits must include

electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit.

(g) * * *

Advisory Committee Comment

Subdivision (f)(4). Under current technology, software programs that allow users to apply electronic bookmarks to electronic documents are available for free.

Rule 3.1113. Memorandum

(a)–(c) * * *

(d) Length of memorandum

Except in a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 15 pages. In a summary judgment or summary adjudication motion, no opening or responding memorandum may exceed 20 pages. No reply or closing memorandum may exceed 10 pages. The page limit does not include the caption page, the notice of motion and motion, exhibits, declarations, attachments, the table of contents, the table of authorities, or the proof of service.

(e)–(g) * * *

(h) Pagination of memorandum

The pages of a memorandum must be numbered consecutively beginning with the first page and using only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the first page.

~~Notwithstanding any other rule, a memorandum that includes a table of contents and a table of authorities must be paginated as follows:~~

~~(1) The caption page or pages must not be numbered;~~

~~(2) The pages of the tables must be numbered consecutively using lower-case roman numerals starting on the first page of the tables; and~~

~~(3) The pages of the text must be numbered consecutively using Arabic numerals starting on the first page of the text.~~

(i) Copies of authorities

(1) A judge may require that if any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority must be lodged with the papers that cite the authority. ~~and~~ If in paper form, the authority must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the authority must be electronically bookmarked as required by rule 3.1110(f)(4).

(2) If a California case is cited before the time it is published in the advance sheets of the Official Reports, the party must include the title, case number, date of decision, and, if from the Court of Appeal, district of the Court of Appeal in which the case was decided. A judge may require that a copy of that case must be lodged. ~~and~~ If in paper form, the copy must be tabbed or separated as required by rule 3.1110(f)(3). If in electronic form, the copy must be electronically bookmarked as required by rule 3.1110(f)(4).

(3) * * *

(j)–(m) * * *

Rule 3.1302. Place and manner of filing

(a) * * *

(b) Requirements for lodged material

Material lodged physically with the clerk must be accompanied by an addressed envelope with sufficient postage for mailing the material. Material lodged electronically must clearly specify the electronic address to which ~~the materials may be returned~~ a notice of deletion may be sent. After determination of the matter, the clerk may mail or send the material if in paper form back to the party lodging it. If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material.

Rule 3.1306. Evidence at hearing

(a)–(b) * * *

(c) Judicial notice

A party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must:

(1) Specify in writing the part of the court file sought to be judicially noticed; and

(2) Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.

Rule 3.1362. Motion to be relieved as counsel

(a)–(c) * * *

(d) Service

The notice of motion and motion, the declaration, and the proposed order must be served on the client and on all other parties who have appeared in the case. The notice may be by personal service, electronic service, or mail.

(1) If the notice is served on the client by mail under Code of Civil Procedure section 1013, it must be accompanied by a declaration stating facts showing that either:

(~~1~~A) The service address is the current residence or business address of the client; or

(~~2~~B) The service address is the last known residence or business address of the client and the attorney has been unable to locate a more current address after making reasonable efforts to do so within 30 days before the filing of the motion to be relieved.

(2) If the notice is served on the client by electronic service under Code of Civil Procedure section 1010.6 and rule 2.251, it must be accompanied by a declaration stating that the electronic service address is the client's current electronic service address.

As used in this rule, "current" means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned or no electronic delivery failure message was received is not, by itself, sufficient to demonstrate that the address is current. If the service is by mail, Code of Civil Procedure section 1011(b) applies.

(e) * * *

Rule 5.66. Proof of service

(a) Requirements to file proof of service

Parties must file with the court a completed form to prove that the other party received the petition or complaint or response to petition or complaint.

(b) Methods of proof of service

(1) The proof of service of summons may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service of Summons* (form FL-115).

(2) The proof of service of response to petition or complaint may be on a form approved by the Judicial Council or a document or pleading containing the same information required in *Proof of Service by Mail* (form FL-335) ~~or,~~ *Proof of Personal Service* (form FL-330), or *Proof of Electronic Service* (form POS-050/EFS-050).

Rule 5.380. Agreement and judgment of parentage in Domestic Violence Prevention Act cases

(a)–(b) * * *

(c) Notice of Entry of Judgment

When an *Agreement and Judgment of Parentage* (form DV-180) is filed, the court must ~~mail~~ serve a *Notice of Entry of Judgment* (form FL-190) on the parties.

Rule 5.390. Bifurcation of issues

(a)–(d) * * *

(e) Notice by clerk

Within 10 days after the order deciding the bifurcated issue and any statement of decision under rule 3.1591 have been filed, the clerk must ~~mail~~ serve copies to the parties and file a certificate of mailing or a certificate of electronic service.

Rule 5.392. Interlocutory appeals

(a) * * *

(b) Certificate of probable cause for appeal

(1) * * *

(2) If it was not in the order, within 10 days after the clerk ~~mails~~ serves the order deciding the bifurcated issue, a party may notice a motion asking the court to certify that there is probable cause for immediate appellate review of the order. The motion must be heard within 30 days after the order deciding the bifurcated issue is ~~mailed~~ served.

(3) The clerk must promptly ~~mail~~ serve notice of the decision on the motion to the parties. If the motion is not determined within 40 days after ~~mailing of~~ serving the order on the bifurcated issue, it is deemed granted on the grounds stated in the motion.

(c) * * *

(d) Motion to appeal

(1) If the certificate is granted, a party may, within 15 days after the ~~mailing of~~ court serves the notice of the order granting it, serve and file in the Court of Appeal a motion to appeal the decision on the bifurcated issue. On ex parte application served and filed within 15 days, the Court of Appeal or the trial court may extend the time for filing the motion to appeal by not more than an additional 20 days.

(2)–(6) * * *

(e) * * *

(f) Proceedings if motion to appeal is granted

(1) * * *

(2) The partial record filed with the motion will be considered the record for the appeal unless, within 10 days from the date notice of the grant of the motion is ~~mailed~~ served, a party notifies the Court of Appeal of additional portions of the record that are needed for the full consideration of the appeal.

(3)–(4) * * *

(g)–(h) * * *

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	Commentator	Position	Comment	Committees' Response
1.	David Chapman Judge Superior Court of Riverside County	AM	In courts that have electronic access to all of its own files, there is no need for a party requesting judicial notice of the court's own records to "provide the court . . . with a copy of the material." (c)(2) as written makes no sense – how does someone "make arrangements to have a file electronically accessible" It is suggested beginning that sentence with "If the file is not electronically accessible to the court" so it would read: "If the file is not electronically accessible to the court , make arrangements with the clerk to have the file in the courtroom at the time of the hearing." An alternative would be "or confirm with the clerk that the file is electronically accessible to the court" so it would say "Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court."	ITAC and CSCAC appreciate Judge Chapman's input. The committees agree. The proposed amendment to rule 3.1306(c)(2) has been revised to provide: "Either make arrangements with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court."
2.	Orange County Bar Association by Todd G. Friedland President	A	The proposal asks for specific comments. The proposal to allow judges to receive courtesy copies would not hinder efforts of courts to move towards paperless and electronic documents. We are hesitant to advocate requiring all exhibits be text searchable at this	The committees appreciate the Orange County Bar Association's comments. The proposal to include a provision on courtesy copies has been removed from the current set of rules amendments as premature; this issue may be pursued in future rules cycles after the judicial branch has more

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	Commentator	Position	Comment	Committees' Response
			early juncture, but agreeable assuming "where feasible" language is used. The language "where feasible" gives the litigant some comfort that best efforts should be used to ensure exhibits are text searchable but not mandatory. Costs to litigants to obtain the necessary software programing to ensure that its documents are text searchable should be assessed.	experience with implementing e-filing. On searchability, the committees decided to recommend at this time requiring that electronic documents, including electronically filed exhibits, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance to litigants, they also decided to recommend adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."
3.	State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco	NI	***Does the proposal appropriately address the stated purpose?*** Generally, yes. The stated purpose of the proposed amendments is "to promote electronic filing, electronic service, and modern e-business practices." Widespread consensus exists in the legal community that text-searchable and electronically bookmarked documents are easier to read and interact with on electronic media (including both computers and e-readers). Yet absent an accompanying mandate that litigants electronically file documents in all state courts, these particular amendments (text searchability and bookmarking) tend to *reflect* existing e-business practices more than they *promote* wider	The committees appreciate the input of the State Bar Committee on Administration of Justice. No response required.

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	Commentator	Position	Comment	Committees' Response
			adoption of these practices. PDF writers are built into most word processors, and they are simpler and more cost effective than printing documents and scanning them (which creates much larger file sizes). The efficiencies built into the technology itself therefore already promote electronic filing and service. What the rules will do, however, is render electronic media more accessible to judicial officers, who in turn may be more inclined to mandate electronic filing or service than they would have previously. To this extent, the rules appear to promote the stated purpose. Some may argue that the amendment requiring electronic bookmarking will actually hinder the proposal's stated purpose. The argument is that electronic bookmarking creates a lot of work for little return, so litigants may be inclined to forego electronic media in favor of simpler paper formatting. In the experience of CAJ's members, judicial officers and litigants who use electronic media to review "papers" do use electronic bookmarks frequently. Ultimately, electronic bookmarking may not complicate a filing any more than adding tabs to paper filings. It is true that electronic bookmarking will, for many, result in an initial learning curve. But the benefits for judicial officers and litigants alike should overcome a relatively simple learning process. And, as	

	Commentator	Position	Comment	Committees' Response
			noted above, the easier electronic media is to use and interact with, the more likely it will be that courts transition from paper files to electronic media. Bookmarking is a step in that direction. There is another way in which bookmarks promote the proposal's stated purpose: for the reasons addressed below, CAJ is not in favor of requiring exhibits to be text searchable. Without text searchability for exhibits, voluminous electronic filings become virtually unnavigable on electronic media. Consider a motion for summary judgment that attaches 20 declarations, each of which contains one or more exhibits. If all of those supporting documents are combined into a single PDF that is not text searchable—as they often are in electronic filings—the reader must scroll through hundreds of pages to find a referenced exhibit. This complication could lead many, including judges who may otherwise be inclined to review the filing on electronic media, to print out the declarations and exhibits, thereby defeating the purpose of promoting electronic filing and service. ***Should the rules require that electronic exhibits be text searchable to the extent feasible?***	

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	Commentator	Position	Comment	Committees' Response
			No. CAJ agrees with the proposal's exemption of exhibits from the text-searchability requirement. Saving an electronic memorandum of points and authorities as a PDF is no more difficult than printing a paper copy. But many exhibits attorneys affix to their filings originate as paper documents, which are often poorly reproduced. Scanning and applying Optical Character Recognition ("OCR") software to a few pages is relatively simple, assuming the attorney has the necessary software. But it can take a fair amount of time to apply OCR software to a voluminous document (particularly a problem when a filer is on a tight deadline), and the process can be difficult with poorly reproduced exhibits. Compounding the issue is the fact that OCR software could potentially be expensive. While free, open-source services exist, the software quality is not always reliable, at least yet. Further, even where the attorney has OCR software, OCR functionality can be highly dependent on the quality of the document subject to the OCR. Often clients will only have access to poorly reproduced or handwritten documents for which OCR software cannot accurately recognize text. Attempts to apply OCR software to those types of documents—to the extent it is possible to do so at all—often results in glitchy or imperfect character	The committees appreciate the difficulties that litigants may encounter in applying OCR software to scanned documents. Accordingly, the committees opted to recommend requiring that electronic documents, including electronically filed exhibits, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance to litigants, they also decided to recommend adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software."

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	Commentator	Position	Comment	Committees' Response
			recognition. Given the current state of the technology, therefore, a rule that mandates text searchability for all exhibits would be unworkable, at least without exceptions that would severely muddy the rule. ***Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF?*** **Yes.** ***Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software?*** **They should not.** ***Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software?*** **Mitigation likely is not necessary.** There should be no concerns about document metadata being carried into electronic documents that are saved as PDFs. When a document is saved as a PDF, the PDF writer (e.g., Acrobat) strips the document's metadata (including tracked changes) from the document and does not transfer any underlying document properties to the PDF. (CAJ uses Acrobat as a continuing example, but different PDF writers	No response required. No response required. No response required.

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)
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	Commentator	Position	Comment	Committees' Response
			should work the same way.) Acrobat *will* create new creation-date and author metadata for the PDF itself, and Acrobat takes that data from the computer on which the document is saved as a PDF. But this data should not reveal sensitive underlying document information, and it is possible to use a data scrubber to remove that data in the rare event that it does contain sensitive information. The one scenario litigants should be careful about is document redaction. Most PDF writers do not automatically burn in redactions (i.e., remove the underlying text). But in recent years, Adobe has modified its software to prompt users to burn in redactions, rendering the process user-friendly. Of note, federal courts nationwide mandate e-filing, and many federal courts specifically require that documents be submitted in PDF format. *E.g.*, N.D. Cal. L. R. 5-1(e) (2) ("Documents filed electronically must be submitted in PDF format. Documents which the filer has in an electronic format must be converted to PDF from the word processing original, not scanned, to permit text searches and to facilitate transmission and retrieval. If the filer possesses only a paper copy of a document, it may be scanned to convert it to PDF format."); C.D. Cal. L. R. 5-4.3.1	

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	Commentator	Position	Comment	Committees' Response
			("Documents filed electronically must be submitted in PDF. . . . PDF IMAGES CREATED BY SCANNING PAPER DOCUMENTS ARE PROHIBITED."). Anecdotal evidence suggests that unintentionally retained metadata has not been an issue in federal court filings, although some courts have online FAQs that guide litigants through these issues. *E.g.*, https://www.cacd.uscourts.gov/e-filing/faq/pdf-related%20questions (Central District of California); http://www.cand.uscourts.gov/pages/946 (Northern District of California). ***Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?*** If anything, the proposed rule should encourage courts to move toward paperless case environments. The practical reality is that many judges will still want and use paper documents, regardless of whether those documents are submitted by litigants or effectively paid for by taxpayers when the judicial officers print those documents themselves. Hence, a rule prohibiting courtesy copies entirely is currently unworkable. The proposed amendment to rule 2.252 ("A judge may request that electronic filers submit paper courtesy copies of an	The proposal to include a provision on courtesy copies has been removed from the current set of rules amendments as premature; this issue may be pursued in future rules cycles after the judicial branch has more experience with implementing e-filing.

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Technology: Modernization of the Rules of Court (Phase II of the Rules Modernization Project) (amend rules 2.100, 2.103, 2.104, 2.105, 2.109, 2.110, 2.111, 2.114, 2.118, 2.140, 2.251, 2.256, 2.306, 2.551, 2.577, 3.250, 3.751, 3.823, 3.1110, 3.1113, 3.1302, 3.1306, 3.1362, 5.66, 5.380, 5.390, and 5.392)

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	Commentator	Position	Comment	Committees' Response
			electronically filed document.") would enact the next-best alternative—an opt-in system that puts the burden on judges to request courtesy copies (as opposed to an opt-out system that judicial officers may neglect to exercise, even if they do not want or need courtesy copies).	
4.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles	AM	• Does the proposal appropriately address the stated purpose? Yes. • Should the rules require that electronic exhibits be text searchable to the extent feasible? Yes. The requirement would provide leeway for self-represented litigants and others such as low-income or disabled clients to e-file exhibits that are not text searchable. • Does the proposal to require that "papers" be	The committees appreciate the input of the State Bar's Standing Committee on the Delivery of Legal Services. The committees recommend that electronic documents, including electronically filed exhibits, be text searchable "when technologically feasible without impairment of the document's image." To provide further guidance to litigants, they also decided to recommend adding an advisory committee comment that would provide: "The term 'technologically feasible' does not require more than the application of standard, commercially available optical character recognition (OCR) software." As recommended by the committees, the rule would not carve out an exception for self-represented litigants.

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	Commentator	Position	Comment	Committees' Response
			text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software? Yes to first question. SCDLS has no comments about the remaining questions. • Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments? The effect of this proposal on moving toward a paperless environment seems to depend on specific court preferences. For example, if a court prefers to review documents in paper form, the court is likely already printing its own paper copies regardless of whether paper courtesy copies are required of litigants, and no paper is likely being saved. **Additional Comments** The rule (see Rule 2.256) should exempt self-represented litigants from e-filing documents that are text-searchable. Despite the stated availability of free software permitting litigants	No response required. No response required. The committees appreciate this suggestion, but decline to pursue it. They weighed the following considerations: (1) word processing software readily converts documents to PDF with no extra

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			to convert documents into text-searchable PDFs, some self-represented litigants may find it challenging to find, access, or use this technology, or otherwise be unfamiliar with it. Having this requirement may discourage some self-represented litigants from e-filing at all (which would be contrary to the proposal's general intent to promote e-filing). The rule (see Rule 3.1110(f)) should also not require that all litigants other than self-represented litigants file exhibits with electronic bookmarking. This could pose a significant barrier for some low-income, moderate-income, or disabled clients, etc. In particular, disabled litigants will need access to the specific technology required to make these e-filed documents into searchable PDFs, and some may also face difficulties gaining physical access to buildings where public shared computers are available. Even if some litigants have legal representation, they may not be able to afford to pay legal counsel additional fees to do electronic bookmarking or to convert their documents into searchable PDFs.	expense and minimal effort; (2) many electronic filing service providers convert documents from word processing format to PDF as part of their services; (3) most scanners are designed to apply OCR software during the scanning process; (4) self-represented litigants may always opt out of electronic filing and file on paper; (5) open source electronic bookmarking software is available for free; (6) competent attorneys could be expected to know or learn how to apply electronic bookmarks; (7) the time spent applying electronic bookmarks should be no more than the time required to tab paper exhibits; and (8) disabled litigants may request reasonable accommodations under the Americans with Disabilities Act.
5.	Superior Court of Orange County Judicial Assistance Group Sheri A. Bull Program Coordinator	NI	**GENERAL COMMENTS** **REJECTION OF DOCUMENTS OFFERED FOR FILING FOR NON-COMPLIANCE WITH FORM AND FORMAT RULES – PAGE NUMBERING, SEARCHABLE**	The committees appreciate the input from the Superior Court of Orange County's Judicial Assistance Group.

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			TEXT, AND BOOKMARKING EXHIBITS *COMMENT*: The proposals for consistent page numbering, searchable text documents, and exhibit formatting will all assist judges, research attorneys and staff work more efficiently, and are therefore good. However, enforcement is problematic. CRC, Rule 2.118 states that a clerk may not reject a filing because it is hand written or the font size is not exactly correct. The rule is essentially moot. Clerks cannot take the time to check documents for exact compliance with form and format requirements in rules because courts are being funded, on average, at only 72% of funding need and because of the sheer number of documents filed. In addition to font size (Rule 2.104) and style (Rule 2.105), clerks will likely not have time to check for page numbering (**proposed Rules 2.109**, **3.1110(c)**, and **3.1113(h)**), whether the documents submitted is text searchable (**proposed Rule 2.256(b)(3)**), or whether the exhibit format requirements are followed (**proposed Rule 3.1110(f)**) . As laudable and useful as these proposals are, they will be difficult to enforce. It may be far more effective for courts to require by contract that EFSP's, as part of their service to filers, comply with these rules by numbering the pages properly and making documents text searchable before submitting to the court.	The committees carefully considered the additional burden on clerks resulting from the proposed amendments to rule 2.100 (requiring that "papers" filed electronically be text searchable), rule 2.109 (requiring that all papers be numbered consecutively using only Arabic numerals), and rule 2.114 (requiring that exhibits submitted with electronically filed "papers" be text searchable). These three amendments would be subject to the general requirement in rule 2.118 that clerks "must not accept for filing or file any papers that do not comply with the rules in this chapter." The proposed amendment to rule 3.1110(f) (requiring that electronic exhibits contain electronic bookmarks) is not subject to rule 2.118 because it does not fall within chapter 1 of title 2 of the California Rules of Court. The committees note that rule 2.118 currently requires rejecting filings for failure to comply with the prescribed font size. Even though courts may not have the resources for clerks to check every document for font size, the committee determined that it would be beneficial to provide an exception in the rules for minimal font variation attributable to converting documents from word processing format to PDF. Anecdotal evidence from practitioners suggests that some have had documents rejected due to minor

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				variations in font size caused by conversion. At the very least, the concern that a document might be rejected due to such variations has caused some practitioners to create PDFs by scanning.
			PERMANENTLY DELETING RECORDS IN ELECTRONIC ENVIRONMENT *PROPOSAL*: **Rule 2.551(b)(6)**, **Rule 2.577(d)(4)**, and **Rule 3.1302(b)** contemplate that the clerk "permanently delete" a document that has been filed, or offered for filing in certain situations, and send notice of the deletion.	The purpose of amending rule 2.551(b)(6) is to modernize the process for returning the lodged record in cases involving motions to seal to accommodate electronic records. It is not intended to change the basic underlying procedure in subdivision (b)(6) of the rule. In the event that a motion is denied, subdivision (b)(6) provides for the return of the record to the moving party or, in the alternative, allows the moving party to notify the court that the record is to be filed (unsealed). To better reflect this purpose, the committees decided to revise subdivision (b)(6) as follows: If the court denies the motion or application to seal, ~~the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing that the record is to be filed. Unless otherwise ordered by the court, the submitting party must notify the clerk within 10 days after the order denying the motion or application.~~ the

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				moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (i) return the lodged record to the moving party if it is in paper form or (ii) permanently delete the lodged record from the court record if it is in electronic form.
			COMMENT on DESTRUCTION: In a typical electronic record environment it may not be possible to 'delete' a document, if 'delete' means remove all copies. A typical electronic court environment would likely have several copies of documents, one in the production environment used by judges and court staff, at least one in a back-up database, and at least one in a duplicate document database accessed by lawyers and the public. Moreover, the back-up database may be optical disks where the image cannot be removed unless the entire disk is destroyed. In the future, court document databases maybe stored in the cloud, which may involve storing different documents in different servers, likely in different locations, and with at	While there may be technical issues with the ability to completely "delete" all electronic documents, the crucial legal point is that the lodged materials record should be deleted or removed *from the record*. The proposed new language—"permanently delete the lodged record"—achieves this purpose. Merely removing public access controls would not. The committees view deletion as necessary here, where lodged materials are accompanied with a request that they be filed under seal. The sensitive nature of these documents requires that they be permanently deleted if the motion is denied, unless otherwise requested by the party. Because existing statutes require the destruction of

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			least one back-up in yet another location. Therefore, permanent deletion is virtually impossible to guarantee. Focusing on the intended outcome of 'destruction', is the issue one of access to the document, as opposed to the mechanics of deletion? If a document is no longer accessible to the public, it is effectively 'destroyed'. This can be accomplished with changes to document access codes, often referred to as security levels. Instead of stating "the clerk must . . . permanently delete", the rules should say "the clerk must . . . eliminate public access to the document", or something similar, for example the language proposed for Rules 2.551(f) and 2.577(g). Finally, the 'deletion' of a document when the court denies the motion or application is problematic in the event of appeal or review of the judge's decision. If the clerk destroys the document that was the subject of the motion, the clerk cannot provide a copy to the reviewing court. If, instead, the document is retained electronically, but public access denied, then it can be produced for the reviewing court. More specifically, in Probate case, supporting documents are lodged and may be considered as part of subsequent Court rulings. For example,	similarly sensitive court records (e.g., the destruction of juvenile records under Welfare and Institutions Code section 826(a)), the committees are confident that case management systems have the capability of deleting lodged materials or can be repurposed to do so. Rule 2.551 currently does not contemplate the retention of lodged materials that are submitted with a motion to seal for purposes of any appeals, regardless of whether these materials are submitted in paper or electronic form. Because this suggestion is beyond the scope of the current rules proposal, it will be deferred for further review by the committees next year. Rules 2.551 would apply to lodged materials in probate cases only if they are submitted in connection with a motion to seal. Any lodged

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			in Orange, the practice is to require all original documents to be submitted by fiduciaries in support of their inventory and appraisals or accountings, including financial account statements, original closing escrow statements, and original residential care facility or long-term care facility bills to be lodged separately from the inventory and appraisal or accounting. The court scans these documents and returns the originals to the filer. The proposal should, therefore, include language to the effect of "if lodged documents serve judicial benefit, the judge may direct the clerk to retain the records indefinitely".	materials in probate cases that are submitted with a motion to seal must be deleted if the motion is denied, unless otherwise specified by the moving party.
			COMMENT on NOTICE OF DESTRUCTION: Sending a notice of document deletion seems unnecessary, particularly in light of the comments above about the inability to completely delete. The court record already captures if a motion to seal a document was granted or not and the status of the lodged document itself, which serves as notice. It is not clear what sending a notice of destruction is intended to accomplish. Requiring notice would be an added workload to staff and would require regular auditing to ensure that all notices have properly gone out. If the rules are changed to say that the document is not accessible to the public, then the document is still present in the court record.	The committees agree that sending a separate notice of deletion is unnecessary here because the court will issue an order denying the motion to seal. The denial order is sufficient to notify the moving party that he or she must request that the lodged material be filed unsealed within 10 days of the order, or the court will permanently delete the lodged material. Accordingly, the committees have revised the proposed amendment to eliminate the notice requirement.

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			ELECTRONIC PROOF OF SERVICE – REMOVING TIME OF SERVICE *PROPOSAL: Rule 2.251(i)* . . . . *(B) The proof of electronic service must state:* . . . . *(B) (2) The date and time of the electronic service, instead of the date and place of deposit in the mail;* . . . . *COMMENT:* For most documents, the time of service is not relevant to the validity of the service to allow the court to proceed. However, there are instances where the time of service is critical. For example, CRC, Rule 3.1203 states that "a party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day before the ex parte appearance . . . ." Not including the time on the proof in these cases may result in the parties and the court preparing for a hearing that cannot take place when the party being served objects that they were not notified by 10 AM. Not having the time also precludes the clerk from notifying the judge whether or not there was valid notice given. There may not be a lot of these cases, and even fewer where the objection is raised, so the deletion may pose no problem most of the time. Alternatively, consider not deleting the	The committees understand this concern. ITAC is concurrently pursuing a legislative proposal that would amend the cut-off time for the effective date of electronic service to 11:59:59 p.m. With this legislation, it is expected that the exact time of electronic service will be an issue in far fewer cases. The proof of electronic service will reflect the date when the document was electronically served, and judicial officers and clerks should be able to ascertain the effective date of filing with this information. That said, there will still be instances when the exact time of electronic service will be an issue. On balance, the committees determined that the benefits of eliminating the time requirement from proofs of electronic service outweighed the costs. Only after electronic service has been effected will the exact time of electronic service be known.

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			language "and time", and adding ", if relevant to validity of service" or something like that.	Requiring that the proof of electronic service specify the time of electronic service has led many to leave the time blank for fear of committing perjury. The committees also reasoned that there are other means for ascertaining the time of electronic service when needed.
			EXEMPTION FOR SELF-REPRESENTED PARTY *PROPOSAL*: Proposed **Rule 3.1110(f)(4)** exempts self-represented parties from book marking exhibits.	
			COMMENT: This is yet another example of the Judicial Council's unnecessary deference to self-represented litigants. Self-represented litigants are not necessarily incapable of complying with format requirements and do not need a blanket exemption. The Advisory Committee Comment seemingly supports this, noting that bookmark programs are free. A survey of self-represented litigants using e-filing indicated that fewer than 5% of SRLs had difficulty finding a way to engage in e-filing in civil cases. A very similar study in Texas experienced the same results. Instead of a blanket exemption, a process similar to that in CRC Rule 2.253(b)(4) for requesting an excuse from mandatory e-filing should be developed applicable to electronic records generally.	The committees decline to pursue this recommendation at this time. The proposed amendments are tailored to promote electronic filing and service in the trial courts. Adding electronic bookmarks to exhibits requires downloading additional software and possessing certain technical knowhow. Because self-represented litigants may always opt out of electronic filing entirely, the committees decided to lower potential barriers to electronic filing.

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			INVITATION TO COMMENT SPR16-25 **SPECIFIC COMMENTS** Does the proposal appropriately address the stated purpose? ☐ Should the rules require that electronic exhibits be text searchable to the extent feasible? *YES*	The committees have opted to revise the rules proposal to require that electronic documents, including electronically filed exhibits, be text searchable "when feasible."
			☐ Does the proposal to require that "papers" be text searchable encourage converting documents created using word processing documents to PDF? Would concerns about metadata associated with the PDF instead encourage scanning and applying OCR software? Or is this concern easily mitigated by Electronic Filing Service Providers or by applying data scrubbing software? *While PDF is, on one sense, a proprietary format, it is now so ubiquitous that it is reasonable to require its use. There are also so many programs, many free, for producing PDFs and addressing metadata issues that it is not burdensome to require its use.*	No response required.
			☐ Would the proposed rule on paper courtesy copies hinder or promote efforts to move courts toward paperless case environments?	

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			In the long run, yes; however, because the trend is to receive paper courtesy copies based on judicial preference, this may take some time to fully implement. *Allowing courtesy copies also eliminates one of the big secondary savings from e-filing, not having to deliver a paper copy to the courthouse. It is time to move into the future. If judges or staff want a paper copy, print one out, don't make the litigants do this.* The advisory committees also seek comments from *courts* on the following cost and implementation matters: ☐ Would the proposal provide cost savings? If so please quantify. *The potential savings from electronic records complying with the new rules would be offset by added costs checking for compliance with the rules. The new rules mandate that all documents that do NOT meet the stated standards, including being text searchable, would be rejected by the courts. This will have significant workload costs, with additional document review criteria needed for every eFiling. The text searchable criteria seems especially burdensome, as clerks would need to*	The proposal to include a provision on courtesy copies has been removed from the current set of rules amendments as premature; this issue may be pursued in future rules cycles after the judicial branch has more experience with implementing e-filing. The committees understand the concern about creating additional burden for courts. The amendments to rule 2.100 (requiring that "papers" filed electronically be text searchable), rule 2.109 (requiring that all papers be numbered consecutively using only Arabic numerals), and rule 2.114 (requiring that all exhibits submitted with electronically filed "papers" be text searchable) are consistent with the other formatting rules in chapter 1 of title 2. They will also result in substantial cost efficiencies for the

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			perform a text search on all electronic documents individually to ensure compliance. *Implementing formatting guidelines, bookmarking and text searchable functionality can help judges or commissioners be able to navigate more quickly in the courtroom. However electronic document viewing applications, such as ELF, may require modification to support the bookmarked exhibits. Without available funds to modernize the technology used, the saving benefits may not be immediately realized.* ☐ What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes	courts, not only in terms of judicial time, but also in the time and expense of applying OCR software to electronically filed documents. It is also possible that some aspects of clerk review might be processed automatically, depending on the policy files of each court's electronic filing management systems. As acknowledged by the Judicial Assistance Group, courts already lack sufficient resources to provide for clerk review of all filings for compliance with the rules. In lieu of delaying the implementation date of these new formatting requirements, each court will continue to allocate resources to clerk review as it sees fit. Moreover, the concern about resources points to the larger issue of whether the council should reconsider the utility of rule 2.118, which requires that clerks reject filings if they do not comply with the formatting rules in chapter 1 of title 2. The larger question of whether rule 2.118 should be modified is outside the scope of the present rules proposal, as circulated, but it will be referred for further consideration to the Civil and Small Claims Advisory Committee.

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			and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. *Courts would need time to work with eFiling applications to ensure they support new guidelines. Courts will also need time to communicate with justice partners, the public, as well as training for staff and judges.* *We would like clarification whether the implementation of amendments to the CRC would apply to Family Law and Juvenile case types or if there are any limitations or discretion by our court that can be specified.* *We need about 6 months to implement training and procedure updates to get staff familiar with PDF capabilities, text searchable guidelines, and what staff should be looking for when accepting or rejecting documents due to formatting errors.* ☐ Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?	No response required. Yes, the proposed amendments to titles 2 and 3 would apply to family and juvenile proceedings. The trial court rules in title 2 of the California Rules of Court "apply to all cases in the superior courts unless otherwise specified by a rule or statute." (Cal. Rules of Court, rule 2.2.) The civil rules in title 3 "apply to all civil cases in the superior courts, including general civil, *family*, *juvenile*, and probate cases, unless otherwise provided by a statute or rule in the California Rules of Court." (*Id.*, rule 3.10, italics added; see also *id.*, rule 5.2(d) ["Except as otherwise provided in these rules, all provisions of law applicable to civil actions generally apply to a proceeding without reference to this rule. To the extent that these rules conflict with provisions in other statutes or rules, these rules prevail"].)

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			Not if it is expected that attorneys would fully comply and clerks would be able to check for compliance after only two months' notice. While we support text searchable documents, the public still needs education regarding how to create one. Orange County still receives a high volume of non-text searchable electronic documents even though it is a less efficient process for the parties involved. A phased in approach seems more pragmatic, where in the first year the filings would not be rejected. During that time, courts could notify parties that future filings that are not text searchable would be rejected.	Please see the committees' response above to these concerns.
			If exhibits must be e-filed, bookmarked and text searchable, this may require changes to the e-filing applications, so we would recommend a phased approach. Would the courts be responsible for enforcement of these electronic filing guidelines? If so, courts might see possible delays/continuances in court trials if parties do not adhere to the amended CRC guidelines.	Because rule 2.118 does not apply to rule 3.1110, clerks would not be required to reject for filing any electronic exhibits that do not comply with the new requirement that electronic exhibits contain electronic bookmarks. It would be left to each individual court to decide whether and how to enforce it. Because rule 2.118 does apply to rule 2.114, clerks would be required to reject for filing all exhibits submitted with electronically filed papers if they are not text searchable.
			This concern would be more easily mitigated if Electronic Filing Service Providers and/or	No response required.

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			courts apply data scrubbing software.	
6.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comment.	The committees appreciate the support of the Superior Court of San Diego County.
7.	TCPJAC/CEAC Joint Rules Subcommittee	AM	Suggested Modifications: **Rule 2.109. Page numbering** Did the Committee consider the additional work required to ensure page limitations on briefs, if the document is consecutively numbered using only Arabic numerals? Typically we see Roman numerals used until the brief begins and then Arabic numerals are used. This makes it easy to see that the brief meets the page limitation. **Rule 2.111. Format of first page** We suggest adding language to (7), as this information would be useful to the court: "(7) Below the nature of the paper or the character of the action or proceeding, the name of the judge and department, if any, to which the case is ~~assigned.~~ **assigned, including the type of event, date and time.**" **Rule 2.252(i) Paper Courtesy Copies** The Rules of Court have not previously addressed the inherent authority of judges to request that lawyers provide copies of filed	The committees appreciate the input of the TCPJAC/CEAC Joint Rules Subcommittee. The committees considered the subcommittee's concerns that the proposed amendment to rule 2.109 would result in an increase in workload for clerks. After weighing the costs and benefits, the committee decided to pursue the proposed amendment because of its significant benefit to judicial officers in referencing page numbers from the bench. The committees decided against pursuing this suggestion because it is outside of the rules proposal, as circulated. It will be referred to the Civil and Small Claims Advisory Committee for future consideration. The proposal to include a provision on courtesy copies has been removed from the current set of rules amendments as premature; this issue may be pursued in future rules cycles after the judicial

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			documents to assist the Court in its adjudicatory responsibilities. Rather, the subject of "courtesy copies" has been left to judicial discretion or to direction provided by local rule. For example, many judges will require counsel to create a binder of motions in limine and related papers and to lodge the copies at or before the final status conference or on the date of trial. Some courts also require copies of certain types of documents to be lodged in particular types of proceedings for the benefit of the judge presiding over the case. (See, e.g., Los Angeles Superior County Court Rule 3.232(l) (specifying contents of a trial notebook to be lodged in CEQA cases); Orange County Superior Court Rule 317 (requiring courtesy copies of "all filings generated by their motions in limine" and organization of such motions in three-ring binders if there are four or more motions in limine); Merced Superior Court Rule 2E (requiring courtesy copies of all motion papers except for motions in cases designated as "complex"); Alameda County Superior Court Rule 3.30 (for civil cases "[a]n identical courtesy copy of any paper filed, lodged, or otherwise submitted in support of, in opposition to, or in connection with any motion or application must be delivered to the courtroom clerk assigned to the Department in which the motion or application will be heard").)	branch has more experience with implementing e-filing.

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			Courts that have had experience with electronic documents have adopted a variety of approaches. Some trial courts have, by local rule, left it to individual judges to request or to order courtesy copies when needed. (See, e.g., Santa Barbara County Superior Court Rule 1012(b)(4) ("The court may by order require the delivery of paper courtesy copies of e-filed documents."); Monterey County Superior Court Rule 1.06E ("A judge may order a paper courtesy copy at any time, either printed or through electronic delivery").) Others have required courtesy copies to be filed for particular case types or circumstances. (See, e.g., San Francisco Superior Court Rule 2.11T (electronic filers must submit "one courtesy paper copy of all filed documents requiring Court review, action, or signature directly to the assigned Judge's department); Alameda County Superior Court Rule 1.85(i) (when a document is electronically filed in a criminal case in connection with a hearing two or fewer days from the date of filing, a paper copy must be delivered to the department where the matter is heard).) It is most important that judicial officers be able to review pleadings in whatever format (paper or electronic image) best facilitates the performance of their Constitutional responsibilities. In addition, it is important that	

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			the Rules of Court allow flexibility. It is likely that, over time, more judges will opt for review of pleadings in an electronic format. Moreover, some dockets and case types lend themselves to easier electronic review than others depending, for example, on the size and complexity of motions and their accompanying evidence. It is very important that the Rules of Court continue to allow individual and local options and flexibility with respect to courtesy copies. Due to the wide variation in practice of many courts in the early stages of implementing e-filing, we recommend deferring formulation of the rule this year and adopting option 1 below. In the event, the decision is made to proceed with a rule at this time, we recommend option 2 to ensure the ability of courts to create local rules that will work best for their jurisdictions. (1) Delete proposed subsection (i) of Rule 2.252. This would leave judicial officers and local courts with the flexibility to deal with the issue of courtesy copies as local practices evolve either overall or in particular case types. Moreover, the current proposal which addresses courtesy copies in the context of electronic filing, might be read to suggest, by negative implication, that courtesy copies are not permitted in	

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			other contexts (i.e., it the current proposal might cast doubt on the ability of judges to request or order courtesy copies when a document is not electronically filed). (2) Redraft the proposal to expressly allow the alternative of a local rule to require courtesy copies. We suggest the following language: "A judge may order that electronic filers submit paper courtesy copies of an electronically filed document, or courtesy copies may be required by local rule."	
			Rule 2.551(b)(6) Return of lodged record It seems unnecessary and would create additional workload to, "**send notice of deletion to the submitting party.**" We suggest deleting this text or at least adding the word, "**may**", before it to allow for the court's ability to do this.	The committees agree that sending a separate notice of deletion is unnecessary here because the court will issue an order denying the motion to seal. The denial order is sufficient to notify the moving party that he or she must request that the lodged records be filed unsealed within 10 days of the order, or the court will permanently delete the lodged records, if in electronic form. Accordingly, the committee has revised the proposed amendment to eliminate the notice requirement.
			We suggest deleting the language, "**The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing that the record is to be filed**." Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest	The intent behind the amendments is not to change the current process for paper lodged records, but to provide a parallel process for electronic lodged records. The committees revised the proposed amendment to make this clear. In addition, resubmission of the lodged records

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			the wording be changed to, "**If the petitioner notifies the clerk in writing that the record is to be filed, then the party shall resubmit the document for filing."** This change in wording also eliminates the problematic term, "in the case file," when referring to electronic files. There is a repository of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical "case file." **Rule 2.551(e)(1)** In the last sentence, the phrase, **"…clearly identify the record as sealed by court order on a specified date."** may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting	would be burdensome for both the moving party and the court, and could potentially lead to errors. Instead, if the moving party notifies the court that the lodged records should be filed, the rule would provide that the court must unseal and file it. This is consistent with current practices and procedures. The committees revised the amendments to eliminate reference to the term "case file." This requirement is currently in the rules and is outside the scope of the rules proposal, as circulated. The committees may take this into consideration in developing future modernization proposals.

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			the phrase and ending the sentence as, "…and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified. **Rule 2.577(d)(4)** As above, it seems unnecessary and would create additional workload to, "**send notice of deletion to the petitioner.**" We suggest deleting this text or at least adding the word, "**may**", before it to allow for the court's ability to do this. We suggest deleting the language, "**The clerk must not place the lodged record in the case file unless that party notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed**." Since the document has been returned or deleted, this statement is not necessary. Instead, we suggest the wording be changed to, "**If the petitioner notifies the clerk in writing within 10 days after the order denying the application that the unsealed petition and related papers are to be filed, then the party shall resubmit the document for filing."** This change in wording also eliminates the problematic term, "in the case file," when referring to electronic files. There is a repository	The committees have revised the proposed amendment to rule 2.577(d)(4) to remove the notice requirement. Please see the committees' response above.

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			of digital documents and data attached to each case. Security settings are used to control access to various documents. There is no physical "case file."	
			Rule 2.577(f)(3) As above, in the last sentence, the phrase, **"…clearly identify the record as sealed by court order on a specified date."** may be problematic depending on the meaning. If this is accomplished through the Register of Action (ROA) only, and not applied to the sealed record itself, it would be fine. The digitally stored document will effectively be sealed by changing the security setting on it. The ROA will have the court order and date. However, if this means to require altering the digitally stored document to include the court order and date, this would require extensive changes to case management systems. We recommend deleting the phrase and ending the sentence as, "…and clearly identify the record as sealed on the Register of Actions." This makes it clear no document can or will be modified.	Please see the committees' response above.
			Rule 3.1110(f) Format of Exhibits (4) The language in this section is too restrictive. We suggest a change in the second sentence from, **"…electronic exhibits must include electronic bookmarks…"** to **"…electronic documents must include electronic**	The committees decided to retain the language that was circulated for public comment, which requires more generally that exhibits include electronic bookmarks with links to the first page of each exhibit. Depending on the experience applying this rule, the committees may revisit it to

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			bookmarks for each subsidiary document, such as each exhibit and each declaration, contained therein…" **Rule 3.1302(b)** As above, it seems unnecessary and would create additional workload to require the clerk to send notice of deletion. We suggest deleting the text, "**The clerk must send notice of deletion to the submitting party,**" or at least changing the word, **"must"** to **"may"**.	determine whether more precision is desirable. Distinct from rules 2.551 and 2.557, which govern the lodged records in the context of sealing motions, rule 3.1302 does not address lodged materials of a sensitive nature. The committees determined that these lodged materials may be maintained by the court. But if the court elects to destroy them, notice would need to be sent to the moving party. Unlike rules 2.551 and 2.557, where the court issues an order denying the motion to seal or the motion for a confidential name change, the court would not otherwise put the moving party on notice of the destruction. To better clarify that rule 3.1302(b) requires notice only if the court opts to delete the lodged materials, the committees have revised the amendment by combining the last two sentences as follows: "If the lodged material is in electronic form, the clerk may permanently delete it after sending notice of the deletion to the party who lodged the material."