



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 16, 2016

Title	Agenda Item Type
Judicial Council-Sponsored Legislation: Electronic Filing, Service, and Signatures	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Enact Code Civ. Proc., § 1013b; amend Code Civ. Proc., §§ 664.5, 1010.6, and 1011	December 16, 2016
Recommended by	Date of Report
Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair	October 28, 2016
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Contact
	Tara Lundstrom, 415-865-7995 tara.lundstrom@jud.ca.gov
	Daniel Pone, 916-323-3121 daniel.pone@jud.ca.gov

Executive Summary

The Policy Coordination and Liaison Committee and Information Technology Advisory Committee recommend that the Judicial Council sponsor legislation to enact Code of Civil Procedure section 1013b and amend sections 664.5, 1010.6, and 1011. This legislative proposal would (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, (4) clarify the application of section 1010.6's electronic service provisions in sections 664.5 and 1011, and (5) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service.

Recommendation

The Policy Coordination and Liaison Committee and Information Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2018:

1. Sponsor legislation enacting new Code of Civil Procedure section 1013b; and
2. Sponsor legislation amending Code of Civil Procedure sections 664.5, 1010.6, and 1011.

The text of the proposed new and amended statutes is attached at pages 9–13.

Previous Council Action

Superior courts across the state are implementing new case management systems that have electronic filing capabilities. Since January 1, 2000, Code of Civil Procedure section 1010.6 has authorized permissive electronic filing and service in the superior courts. (Stats. 1999, ch. 514, § 1.) The Judicial Council first adopted statewide rules implementing permissive electronic filing and service in the trial courts in 2002.

Four years ago, the Legislature enacted Assembly Bill 2073 (Stats. 2012, ch. 320), which authorized the Superior Court of Orange County to implement a mandatory electronic filing and service pilot project. (Stats. 2012, ch. 320; codified as Code Civ. Proc., § 1010.6(d).) AB 2073 also instructed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service in specified civil actions. (Code Civ. Proc., § 1010.6(f).) Upon adoption of those rules, AB 2073 allowed superior courts to require mandatory electronic filing by local rule. (*Id.*, § 1010.6(g).) Effective July 1, 2013, the council adopted uniform rules providing for mandatory electronic filing and service in civil cases. The trial court rules now provide a framework for mandatory and permissive filing and service in civil cases.

Rationale for Recommendation

This legislative proposal builds on the lessons learned in promulgating the uniform mandatory electronic filing and service rules, as well as the experience of the Superior Court of Orange County and other superior courts in implementing mandatory and permissive electronic filing. It would amend the Code of Civil Procedure to authorize electronic signatures, promote consistency in the requirements for electronic filing and service, codify various provisions in the trial court rules, and clarify the application of section 1010.6's electronic service provisions in other statutes.

In developing this proposal, the Information Technology Advisory Committee (ITAC) sought input from the Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Advisory Committee on Providing Access and Fairness.

Proposed amendments to section 1010.6

The proposed amendments to section 1010.6 would authorize electronic signatures on electronically filed documents, provide for consistency in the effective date of filing across courts and case types, consolidate the mandatory electronic filing provisions, and codify the provisions that are currently in the rules on mandatory electronic service, effective date of electronic service, and protections for self-represented litigants.

Authorize electronic signatures on electronically filed documents. Section 1010.6(b)(2)(B) currently requires that anyone who electronically files a document signed under penalty of perjury must print, sign, and keep the document indefinitely. These requirements have proved burdensome for litigants, especially government agencies and other high-frequency filers.

This proposal would amend subdivision (b)(2)(B) to provide that electronically filed documents may in the future be signed under penalty of perjury by means of an electronic signature. The proposed amendment would require that the electronic signature satisfy procedures, standards, and guidelines established by the Judicial Council. The language mirrors Government Code section 68150(g), which currently authorizes electronic signatures by judges and the courts.

To accommodate those without access to electronic signature technology, the proposal would also retain but modify the procedures required in the current statute. The proposed amendment would still allow documents to be printed and signed by hand (in lieu of an electronic signature); however, it would eliminate the requirement that the original signature be maintained indefinitely. Instead, it would require the person signing the document to maintain the original signatures only until “final disposition of the case” as defined in Government Code section 68151(c).

Provide for a consistent effective date of filing across courts and case types. Under current law, where electronic filing is permissive, documents must be received before the “close of business”—which is defined as 5 p.m. or the time at which the court would not accept filing at its filing counter, whichever is earlier—in order to be deemed filed that day. (Code Civ. Proc., § 1010.6(b)(3).) However, in authorizing the Superior Court of Orange County’s mandatory electronic filing pilot project, the Legislature provided that the court “may permit documents to be filed electronically until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely.” (*Id.*, § 1010.6(d)(1)(D).)

With the exception of the Superior Court of Orange County’s mandatory electronic filing pilot project, the statute is silent as to when documents must be electronically filed for mandatory electronic filing cases to be deemed filed that day. (See *id.*, § 1010.6(g)(2).) In adopting uniform rules for mandatory electronic filing, the Judicial Council elected to allow courts to provide by local rule for up-until-midnight electronic filing in mandatory electronic filing cases (the approach provided by the Legislature for the Superior Court of Orange County’s mandatory electronic filing pilot project). Otherwise, in the absence of such a local rule, the document must be filed by “close of business” to be deemed filed that day. (Cal. Rules of Court, rule 2.253(b)(7).) The rules also define “close of business” as “5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier.” (*Id.*, rule 2.250(b)(10).)

Accordingly, the current statute and rules allow for both inter- and intracourt variation in the effective date for electronic filing depending on (1) whether electronic filing is permissive or mandatory for the case type, and (2) what time a court stops accepting filings each day. The

potential for variation has increased in recent years as budget concerns have caused many courts to cut back on the hours that their filing counters are open. To provide for consistency across courts and case types, the committee recommends that the cutoff time be midnight for determining the effective date of filing for both permissive and mandatory electronic filing.

In response to comments requesting that the statute specifically address documents received electronically by a court at 12 a.m. and on noncourt days, the committee revised the proposal as follows: “Any document received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed filed on that court day. Any document that is received electronically on a noncourt day shall be deemed filed on the next court day.”

Codify the effective date of electronic service. The statute is silent with respect to the effective date of electronic service. Instead, the effective date of electronic service is specified in rule 2.251(h)(4), which provides that electronic service that “occurs after the close of business is deemed to have occurred on the next court day.” As noted above, the rules define “close of business” as “5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier.” (*Id.*, rule 2.250(b)(10).)

This proposal would codify the effective date of service by adding a new paragraph (5) to section 1010.6(a). To provide for consistency across courts and with the proposed effective date of electronic filing, the new paragraph would provide: “Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically on a noncourt day shall be deemed served on the next court day.”

Consolidate the mandatory electronic filing provisions. Subdivision (d) of section 1010.6 provides that the Superior Court of Orange County may establish a pilot project to require that parties to specified civil actions electronically file and serve documents. Subdivision (g) provides that trial courts may require mandatory electronic filing by local rule after the Judicial Council adopts uniform mandatory electronic filing and service rules. Because the statutory authorization for the pilot project expired on July 1, 2014, this proposal would amend section 1010.6 to eliminate references to the pilot project and consolidate the provisions governing mandatory electronic filing in subdivision (d).

Codify the mandatory electronic service provisions. This proposal would codify the mandatory electronic service provisions from the rules. Subdivision (a) of section 1010.6—which governs electronic service in trial courts generally—does not expressly authorize mandatory electronic service. (See Code Civ. Proc., § 1010.6(a)(2) [authorizing electronic service of a document

“when a party has agreed to accept service electronically in that action”].¹ Subdivisions (c) and (d) recognize that mandatory electronic service may be required by court order in complex civil cases or by local rule as part of the Superior Court of Orange County’s electronic filing pilot project. The authority for the mandatory electronic service rules is instead derived from subdivision (f) of section 1010.6, which required the Judicial Council, on or before July 1, 2014, to adopt uniform rules to permit mandatory electronic filing and service of documents in the trial courts.

In adopting rules to implement subdivision (f), the Judicial Council decided to allow courts to require electronic service by local rule or court order. (Cal. Rules of Court, rule 2.251(c)(1) [“A court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in the Code of Civil Procedure section 1010.6 and the rules . . .”].) Similarly, under rule 2.251(c)(2), if a court requires a party to electronically file documents in an action, the party “must also serve documents and accept service of documents electronically from all other parties,” subject to certain exceptions. (See also *id.*, rule 2.251(b) [providing that a party consents to electronic service by electronic filing of any document with the court, unless the party is self-represented].)

To codify these rules, this proposal would amend subdivision (d) not only to consolidate the mandatory electronic filing provisions, but also to authorize mandatory electronic service. Authorizing mandatory electronic service in revised subdivision (d) would track the language in current subdivisions (c) and (d), which authorize both mandatory electronic filing and service in complex cases and through the Superior Court of Orange County’s pilot project. This proposal would also codify these rules by amending subdivision (a)(2) to recognize that electronic service is required when a court has ordered electronic service under subdivisions (c) or (d) (as revised).

Codify the protections for self-represented persons. The trial court rules that implement the electronic filing and service provisions of section 1010.6 already contain significant protections for self-represented persons. Rules 2.251(c)(2)(B) and 2.253(b)(2) exempt self-represented persons from mandatory electronic filing and service. These rules were adopted in response to the instructions in section 1010.6(f) that the uniform mandatory electronic filing and service rules include statewide policies on unrepresented litigants.

This proposal would codify the exceptions for self-represented persons by adding a new subdivision (d)(4) to provide that unrepresented persons are exempt from mandatory electronic

¹ Subdivision (a)(3) does allow courts to electronically serve a document if the party has agreed to accept electronic service or the court has ordered electronic service under subdivisions (c) or (d), which currently refer to mandatory electronic service in complex civil cases and the Superior Court of Orange County’s pilot project. But it does not expressly allow courts—other than the Superior Court of Orange County—to require electronic service of a document in cases other than complex civil cases. Nevertheless, because this proposal would amend subdivision (d) to address mandatory electronic service in all courts, this proposal would not need to make any further amendments to subdivision (a)(3).

filing and service. It would also amend subdivisions (a)(2) and (3) to provide that mandatory electronic service applies to parties and other persons only if they are represented.

Proposed amendments to sections 664.5 and 1011

The proposed amendments to sections 664.5 and 1011 would clarify the application of section 1010.6's electronic service provisions. Under section 1010.6(a)(2), a document may be electronically served whenever "a document may be served by mail, express mail, overnight delivery, or facsimile transmission." Similarly, subdivision (a)(3) currently provides that where the parties have consented to electronic service, or the court has required electronic service—by order or local rule in complex civil cases or in the Superior Court of Orange County's mandatory electronic filing pilot project—a court may also electronically serve any document issued by the court that is not required to be personally served.

Section 664.5 provides for personal delivery and mailing of the notice of the entry of judgment. To clarify the application of section 1010.6, subdivision (a) would be amended to reference electronic service under section 1010.6. Other references to "mail" and "certificate of mailing" in section 664.5 would be replaced with the more inclusive terms "serve" and "certificate of service."

Section 1011 recognizes possible means of service. This proposal would add a new subdivision (c) to cross-reference section 1010.6: "Electronic service shall be permitted pursuant to Section 1010.6 and the rules on electronic service in the California Rules of Court." This language is taken directly from section 1013, which governs service of notices or other papers. (See Code Civ. Proc., § 1013(g).)

Proposed new section 1013b

Proposed new section 1013b would codify the trial court rule governing proof of electronic service. Currently, the Code of Civil Procedure addresses proof of service by mailing, but not proof of electronic service. (See Code Civ. Proc., § 1013a.) Proof of electronic service is addressed only in the California Rules of Court. (See Cal. Rules of Court, rule 2.251(i).) To fix this apparent statutory gap and to assist other advisory committees in their efforts to modernize their statutes, the legislative proposal would add a new section 1013b.²

The proposed language for section 1013b(a)(1) is not currently in rule 2.251; it is intended to correct an oversight in the rule that conflicts with section 1010.6.³ Code of Civil Procedure

² ITAC is currently leading a collaborative, multiyear effort to modernize the statutes and rules to facilitate e-business, electronic filing, and electronic service. As part of phase II of this project, ITAC and the Probate and Mental Health Advisory Committee have recommended a legislative proposal to amend the Probate Code to authorize electronic service of notices and other papers. The Probate Code currently cross-references Code of Civil Procedure section 1013a for proof of mailing. (See Prob. Code, § 1261.) Introducing a new section 1013b on proof of electronic service to the Code of Civil Procedure would avoid adding a reference to the rules in the Probate Code.

³ This year, the Judicial Council adopted rule amendments that will eliminate this requirement from the rule effective January 1, 2017.

section 1013a requires that proof of service by mail be made by affidavit or certificate showing that “the person making the service” is “not a party to the cause.” However, Code of Civil Procedure section 1010.6 allows for electronic service by a party. (Code Civ. Proc., § 1010.6(a)(1)(A) [“Electronic service may be performed directly *by a party*, by an agent of a party, including the party’s attorney, or through an electronic filing service provider,” italics added].) To reflect this difference, proposed section 1013b(a) would add another exception to the general requirement that proof of electronic service be made by any of the methods provided in section 1013a for proof of mailing. Proposed section 1013b(a)(1) would recognize that proof of electronic service need not state that the party making the service is “not a party to the cause.”

The proposed language for section 1013b(a)(2) is taken directly from rule 2.251(i)(1). In stating the requirements for proof of electronic service, rule 2.251(i)(1) incorporates the requirements for proof of mailing in Code of Civil Procedure section 1013a, subject to several exceptions. The proposed language for section 1013b(a)(2) differs from the language in rule 2.251(i)(1) in one way: it would require that the proof of electronic service list only the date of electronic service, not the time and date.⁴ In practice, it has been difficult to implement the requirement that the proof of electronic service list the time of electronic service; the person executing the proof of electronic service will not know the exact time of electronic service until after it has occurred.

The proposed language for section 1013b(b) is taken directly from rule 2.251(i)(2), which provides that proof of electronic service may be in electronic form and may be electronically filed with the court. Proposed section 1013b(c) modifies the language in rule 2.251(i)(4) to cross-reference the proposed new signature requirements (discussed above) in Code of Civil Procedure section 1010.6(b)(2)(B).

Comments, Alternatives Considered, and Policy Implications

The rules proposal circulated for public comment on the spring 2016 cycle. Fourteen commentators submitted comments in response to the invitation to comment: four agreed with the proposal, seven agreed if modified, and three did not indicate their position. The committee’s specific responses to each comment are available in the attached comment chart at pages 14–31.

One commentator expressed concern about the term “other person” in section 1010.6(a) and questioned to whom this term applied. The committee considered the commentator’s suggestion to identify these individuals in the statute, but declined to pursue it in light of the wide variety of individuals who might fall under the category of persons other than parties. Instead, the committee determined that providing further clarification was best left for implementing rules proposals. Comprehensively identifying those who fall in the category of “other person” is complicated because it varies by case type. For example, these individuals might include grandparents, siblings, caregivers, and other adult relatives in juvenile dependency proceedings, whereas it might include creditors, known heirs and devisees, and anyone requesting special

⁴ This year, the Judicial Council adopted rule amendments, effective January 1, 2017, that will also eliminate this requirement from the rule.

notice in probate proceedings. The Welfare and Institutions Code and Probate Code recognize service on and by these individuals.

The committee also considered recommending a 5 p.m. cutoff time for the effective date of electronic filing and service in proposed new subdivision (a)(5) and amended subdivision (b)(3) of Code of Civil Procedure section 1010.6. In light of the input received by the public and other advisory committees, the committee decided to retain its recommendation that midnight be the cutoff time. Although valid concerns were raised both in support of and against a midnight cutoff time, the committee decided that it preferred this option after weighing the arguments. A midnight cutoff time would best serve the needs of self-represented litigants, many of whom are unable to electronically file and serve during regular work hours.

Implementation Requirements, Costs, and Operational Impacts

To the extent that this proposal would codify existing requirements in the trial court rules, it is not expected to result in any additional costs or to otherwise affect the implementation of electronic filing and service in the superior courts. Standardizing the cutoff time for the effective date of electronic filing and service at midnight would require those courts that allow for electronic filing and service until close of business to make modifications to their case management systems. Overall, however, providing consistency and clarity across courts and case types is expected to result in efficiency gains for litigants.

To implement the authorization for electronic signatures, the Judicial Council would need to adopt standards and guidelines governing electronic signatures by parties and other persons. This would require staff time and resources. Because electronic signatures would be applied by the party or person either directly or through an electronic filing service provider, it is expected that there will be minimal implementation or ongoing costs for courts. Because original signatures made under penalty of perjury would no longer need to be retained indefinitely, it is expected to result in efficiencies for litigants and government agencies.

Attachments

1. Text of proposed Code of Civil Procedure sections 664.5, 1010.6, 1011, and 1013b, at pages 9–13
2. Chart of comments, at pages 14–31

Section 1013b of the Code of Civil Procedure is enacted and sections 664.5, 1010.6, and 1011 are amended, effective January 1, 2018, to read:

1 **§ 664.5.**

2
3 (a) In any contested action or special proceeding other than a small claims action or an
4 action or proceeding in which a prevailing party is not represented by counsel, the party
5 submitting an order or judgment for entry shall prepare and serve, by personal delivery,
6 ~~or by mail, or by electronic service under Section 1010.6,~~ a copy of the notice of entry of
7 judgment to all parties who have appeared in the action or proceeding and shall file with
8 the court the original notice of entry of judgment together with the proof of service ~~by~~
9 ~~mail~~. This subdivision does not apply in a proceeding for dissolution of marriage, for
10 nullity of marriage, or for legal separation.

11
12 (b) Promptly upon entry of judgment in a contested action or special proceeding in which
13 a prevailing party is not represented by counsel, the clerk of the court shall ~~mail~~ serve
14 notice of entry of judgment to all parties who have appeared in the action or special
15 proceeding and shall execute a certificate of such ~~mailing~~ service and place it in the
16 court's file in the cause.

17
18 (c) * * *

19
20 (d) Upon order of the court in any action or special proceeding, the clerk shall ~~mail~~ serve
21 notice of entry of any judgment or ruling, whether or not appealable.

22
23 (e) The Judicial Council shall, ~~by January 1, 1999, adopt a rule of court for the purposes~~
24 ~~of providing~~ provide by rule of court that, upon entry of judgment in a contested action or
25 special proceeding in which a state statute or regulation has been declared
26 unconstitutional by the court, the Attorney General is promptly notified of the judgment
27 and that a certificate of that ~~mailing~~ service is placed in the court's file in the cause.

28
29 **§ 1010.6.**

30
31 (a) A document may be served electronically in an action filed with the court as provided
32 in this section, in accordance with rules adopted pursuant to subdivision (e).

33
34 (1) For purposes of this section:

35
36 (A) "Electronic service" means service of a document, on a party or other person, by
37 either electronic transmission or electronic notification. Electronic service may be
38 performed directly by a party or other person, by an agent of a party or other person,
39 including the party's or other person's attorney, or through an electronic filing service
40 provider.

1 (B) “Electronic transmission” means the transmission of a document by electronic means
2 to the electronic service address at or through which a party or other person has
3 authorized electronic service.

4
5 (C) “Electronic notification” means the notification of the party or other person that a
6 document is served by sending an electronic message to the electronic address at or
7 through which the party or other person has authorized electronic service, specifying the
8 exact name of the document served, and providing a hyperlink at which the served
9 document may be viewed and downloaded.

10
11 (2) If a document may be served by mail, express mail, overnight delivery, or facsimile
12 transmission, electronic service of the document is authorized when a party or other
13 person has agreed to accept service electronically in that action or when a court has
14 ordered electronic service on a represented party or other represented person under
15 subdivision (c) or (d).

16
17 (3) In any action in which a party or other person has agreed to accept electronic service
18 under paragraph (2), or in which the court has ordered electronic service on a represented
19 party or other represented person under subdivision (c) or (d), the court may
20 electronically serve any document issued by the court that is not required to be personally
21 served in the same manner that parties electronically serve documents. The electronic
22 service of documents by the court shall have the same legal effect as service by mail,
23 except as provided in paragraph (4).

24
25 (4) * * *

26
27 (5) Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on
28 a court day shall be deemed served on that court day. Any document that is served
29 electronically on a noncourt day shall be deemed served on the next court day.

30
31 (b) A trial court may adopt local rules permitting electronic filing of documents, subject
32 to rules adopted pursuant to subdivision (e) and the following conditions:

33
34 (1) * * *

35
36 (2)(A) When a document to be filed requires ~~the a~~ signature, not under penalty of perjury,
37 ~~of an attorney or a self-represented party,~~ the document shall be deemed to have been
38 signed by ~~that attorney or self-represented party~~ the person filing if filed electronically.

39
40 (B) When a document to be filed requires the signature, under penalty of perjury, of any
41 person, the document shall be deemed to have been signed by that person if filed
42 electronically and if either of the following conditions is satisfied:

1 (i) That person has signed a printed form of the document ~~has been signed by that person~~
2 prior to, or on the same day as, the date of filing. The attorney or person filing the
3 document represents, by the act of filing, that the declarant has complied with this
4 section. The attorney or person filing the document shall maintain the printed form of the
5 document bearing the original signature until final disposition of the case, as defined in
6 subdivision (c) of Government Code section 68151, and make it available for review and
7 copying upon the request of the court or any party to the action or proceeding in which it
8 is filed.

9
10 (ii) That person has signed the document using a computer or other technology in
11 accordance with procedures, standards, and guidelines established by the Judicial Council
12 pursuant to this section.

13
14 ~~(3) Any document that is electronically filed with the court after the close of business on~~
15 ~~any day shall be deemed to have been filed~~ received electronically by the court between
16 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed filed on that court day. Any
17 document that is received electronically on a noncourt day shall be deemed filed on the
18 next court day. "Close of business," as used in this paragraph, shall mean 5 p.m. or the
19 time at which the court would not accept filing at the court's filing counter, whichever is
20 earlier.

21
22 (4)-(6) * * *

23
24 (c) * * *

25
26 (d) A superior court may, by local rule, require electronic filing and service in civil cases,
27 subject to the requirements and conditions stated in subdivision (b) of this section, the
28 rules adopted by the Judicial Council under subdivision (f), and the following conditions:

29
30 ~~(1) Notwithstanding subdivision (b), the Orange County Superior Court may, by local~~
31 ~~rule and until July 1, 2014, establish a pilot project to require parties to specified civil~~
32 ~~actions to electronically file and serve documents, subject to the requirements set forth in~~
33 ~~paragraphs (1), (2), (4), (5), and (6) of subdivision (b) and rules adopted pursuant to~~
34 ~~subdivision (e) and the following conditions:~~

35
36 ~~(A)~~ The court shall have the ability to maintain the official court record in electronic
37 format for all cases where electronic filing is required.

38
39 ~~(B)~~(2) The court and the parties shall have access either to more than one electronic filing
40 service provider capable of electronically filing documents with the court, or to electronic
41 filing access directly through the court. Any fees charged by the court shall be for no
42 more than the actual cost of the electronic filing and service of the documents, and shall
43 be waived when deemed appropriate by the court, including, but not limited to, for any

1 party who has received a fee waiver. Any fees charged by an electronic filing service
2 provider shall be reasonable and shall be waived when deemed appropriate by the court,
3 including, but not limited to, for any party who has received a fee waiver.

4
5 ~~(C)(3)~~ The court shall have a procedure for the filing of nonelectronic documents in order
6 to prevent the program from causing undue hardship or significant prejudice to any party
7 in an action, including, but not limited to, unrepresented parties.

8
9 (4) Unrepresented persons are exempt from mandatory electronic filing and service.

10
11 ~~(D) A court that elects to require electronic filing pursuant to this subdivision may permit~~
12 ~~documents to be filed electronically until 12 a.m. of the day after the court date that the~~
13 ~~filing is due, and the filing shall be considered timely. However, if same day service of a~~
14 ~~document is required, the document shall be electronically filed by 5 p.m. on the court~~
15 ~~date that the filing is due. Ex parte documents shall be electronically filed on the same~~
16 ~~date and within the same time period as would be required for the filing of a hard copy of~~
17 ~~the ex parte documents at the clerk's window in the participating county. Documents~~
18 ~~filed on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest~~
19 ~~court day following the filing.~~

20
21 ~~(2) If a pilot project is established pursuant to paragraph (1), the Judicial Council shall~~
22 ~~conduct an evaluation of the pilot project and report to the Legislature, on or before~~
23 ~~December 31, 2013, on the results of the evaluation. The evaluation shall review, among~~
24 ~~other things, the cost of the program to participants, cost effectiveness for the court,~~
25 ~~effect on unrepresented parties and parties with fee waivers, and ease of use for~~
26 ~~participants.~~

27
28 (e) * * *

29
30 ~~(f) The Judicial Council shall, on or before July 1, 2014, adopt uniform rules to permit~~
31 ~~the mandatory electronic filing and service of documents for specified civil actions in the~~
32 ~~trial courts of the state, which shall be informed by any study performed pursuant to~~
33 ~~paragraph (2) of subdivision (d) and which shall include statewide policies on vendor~~
34 ~~contracts, privacy, access to public records, unrepresented parties, parties with fee~~
35 ~~waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the~~
36 ~~integrity of electronic service. These rules shall conform to the conditions set forth in this~~
37 ~~section, as amended from time to time.~~

38
39 ~~(g) (1) Upon the adoption of uniform rules by the Judicial Council for mandatory~~
40 ~~electronic filing and service of documents for specified civil actions in the trial courts of~~
41 ~~the state, as specified in subdivision (f), a superior court may, by local rule, require~~
42 ~~mandatory electronic filing, pursuant to paragraph (2) of this subdivision.~~

1 ~~(2) Any superior court that elects to adopt mandatory electronic filing shall do so~~
2 ~~pursuant to the requirements and conditions set forth in this section, including, but not~~
3 ~~limited to, paragraphs (1), (2), (4), (5), and (6) of subdivision (b) of this section, and~~
4 ~~subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (d), and pursuant to the~~
5 ~~rules adopted by the Judicial Council, as specified in subdivision (f).~~

6
7 **§ 1011.**

8
9 The service may be personal, by delivery to the party or attorney on whom the service is
10 required to be made, or it may be as follows:

11
12 (a)–(b) * * *

13
14 (c) Electronic service shall be permitted pursuant to Section 1010.6 and the rules on
15 electronic service in the California Rules of Court.

16
17 **§ 1013b.**

18
19 (a) Proof of electronic service may be made by any of the methods provided in Section
20 1013a, with the following exceptions:

21
22 (1) The proof of electronic service does not need to state that the person making the
23 service is not a party to the cause.

24
25 (2) The proof of electronic service shall state:

26
27 (A) The electronic service address of the person making the service, in addition to that
28 person’s residence or business address;

29
30 (B) The date of the electronic service, instead of the date and place of deposit in the mail;

31
32 (C) The name and electronic service address of the person served, in place of that
33 person’s name and address as shown on the envelope; and

34
35 (D) That the document was served electronically in place of the statement that the
36 envelope was sealed and deposited in the mail with postage fully prepaid.

37
38 (b) Proof of electronic service may be in electronic form and may be filed electronically
39 with the court.

40
41 (c) Proof of electronic service shall be signed as provided in subparagraph (B) of
42 paragraph (2) of subdivision (b) of Section 1010.6.

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	Commentator	Position	Comment	Committee Response
1.	Bet Tzedek Legal Services by Janet R. Morris, Esquire Attorney	A	<p>Bet Tzedek supports the proposal to eliminate the wet signature requirement for electronically assembled and filed documents and to establish procedures for an electronic signature.</p> <p>In our experience in managing a large self help conservatorship clinic; consistency and accuracy is achieved when there is a single electronically signed and filed document.</p> <p>We would also like to suggest that there be a way to receive the court's orders by email as well so that a litigant could download and print them. This will assist litigants who cannot make it back to the courthouse easily to retrieve their orders post hearing.</p>	<p>The committee appreciates Bet Tzedek Legal Services' support.</p> <p>Code of Civil Procedure section 1010.6(a)(3) currently authorizes a court to electronically serve "any document issued by the court that is not required to be personally served." With the roll out of new case management systems that allow for electronic filing throughout the state, courts will increasingly be able to take advantage of this existing authority and provide for electronic service of court-issued documents.</p>
2.	California Department of Child Support Services by Alisha A. Griffin Director Rancho Cordova	NI	DCSS has reviewed LEG16-10 entitled Technology: Electronic Filing, Service, and Signature, and is supportive of the changes JCC has proposed. The JCC proposals address much of what this department tried to address with AB 1519, namely the requirement to keep an original wet signature on a document signed under penalty of perjury indefinitely (CCP 1010.6). The fact that your proposal seeks to amend that section to permit these documents be signed by means of electronic signature is a huge step forward so long as it does not run afoul of Family Code Section 17400(b)(3) or the	The committee appreciates the input of the California Department of Child Support Services. This legislative proposal would not affect the application of Family Code section 17400(b)(3)—which governs "[n]otwithstanding any other law"—to electronically filed pleadings signed under penalty of perjury by an agent of the local child support agency.

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			<p>resulting Judicial Council Rules of Court, which states:</p> <p>Notwithstanding any other law, effective July 1, 2016, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time proscribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, by July 1, 2016, shall develop rules to implement this subdivision.</p> <p>We appreciate that the language is not mandatory in that it permits those without access to e-signature to still sign manually and then only retain the document until final deposition of the case. This option will allow our department to take a phased implementation approach if our system changes cannot be completed by the JCC effective date of January 1, 2018.</p> <p>The department appreciates the opportunity to comment on your proposal and the work done by the JCC to advance, promote, and expand</p>	<p>No response required.</p>

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			legal electronic communications. The department suggests only that the above Rule of Court or any others that may be impacted be considered prior to implementation so that all bodies of law on this issue are in line with one another.	The committee agrees and intends to propose implementing amendments to the California Rules of Court that next year. It is contemplated that e-signature standards and guidelines would also be developed next year, in collaboration with the Court Executives Advisory Committee.
3.	Laurel Halbany MRHFM LLC Oakland	AM	<p>The proposed changes to electronic service rules should retain a filing and service deadline of “close of business” (that is, 5:00 p.m.) for a document to be considered timely filed and served that court day.</p> <p>Changing the deadline to “before midnight” invites gamesmanship and will, in effect, eliminate a full day from the required time of service. Vendors such as LexisNexis allow automated service, such that a document may be uploaded with the direction that it is automatically served at a particular time - for example, that a document uploaded at 4:45 p.m. not actually be served and available to opposing parties until just before midnight. While it is not uncommon for attorneys to work somewhat later than 5:00 p.m., it is far less common to be working at midnight. Thus, parties have every incentive to delay service until close to midnight, depriving their opponents of additional time to review and respond to document served.</p> <p>Additionally, the proposal is silent as to the timeliness of documents served precisely at</p>	<p>The committee appreciates Ms. Halbany’s input.</p> <p>On balance, the committee determined that the benefits of allowing for electronic service up until midnight outweighed the costs. The committee also considered that the risk of gamesmanship is mitigated by the deadline extension of two court days for responding to electronically served documents (as provided in Code of Civil Procedure section 1010.6(a)(4)).</p> <p>The committee has revised the legislative proposal to address the effective date of filing for</p>

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			midnight.	documents that are electronically filed and served at 12:00 a.m.
4.	Lisa Los Angeles	AM	I feel that the filing deadline should be restricted to 5:00 p.m. Support staff should not have to bear the burden of working until midnight to pick up the slack for attorneys that wait until the last minute to draft and/or make revisions.	The committee shares this concern. On balance, however, the committee determined that the benefits of allowing for electronic service up until midnight outweighed the detriments and costs.
5.	Mark W. Lomax Attorney Pasadena	AM	<p>(1) Since C.C.P. section 1010.6(a)(1)(A) authorizes two methods of electronic service-- electronic transmission and electronic notification—proposed new C.C.P. section 1013b, which will prescribe proof of electronic service, should require that a proof of electronic service state which method of service was used.</p> <p>(2) Proposed new C.C.P. section 1013b does not seem to contemplate service by electronic notification. It does not require a proof of electronic service effected by electronic notification to contain information that would be important if service were disputed, such as the name of the electronic service provider. Here is the relevant portion of a proof of electronic service made by electronic notification, which was filed in 2016 in a complex litigation case in the Los Angeles Superior Court: "Service was effectuated via electronic service by Case Anywhere, the matter's e-service provider pursuant to court order dated March 14, 2011. I uploaded onto the Case Anywhere document depository a true</p>	<p>The committee appreciates Mr. Lomax's input. It declines to pursue these recommendations because the proposed new Code of Civil Procedure section 1013b adequately covers electronic service by both electronic transmission and electronic notification.</p> <p>New proposed Code of Civil Procedure section 1013b sufficiently contemplates electronic service by notification. The requirement in proposed section 1013b(a)(2)(D) that the proof of electronic service state that "the document was served electronically" contemplates electronic service by notification. This conclusion is supported by section 1010.6(a), which expressly recognizes "electronic service" as including "electronic transmission" and "electronic notification." Thus, "electronic notification" is a form of electronic service of a document. (See Code Civ. Proc., § 1010.6(a)(1)(C) [defining "electronic notification" as "the notification of the party or other person that a <i>document is served</i> by sending an electronic message to the electronic address at or through</p>

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			<p>and correct copy of the document being served, and the Case Anywhere electronic service system e-mailed notices of uploading of the same, which notices included links to the documents uploaded, to the parties indicated in the attached electronic service list.” As you can see, very little of the contents of this proof of service would be required by proposed new section 1013b.</p> <p>(3) Under current law, proof of service by mail is prescribed by C.C.P. section 1013a. Instead of amending section 1013a to include a provision prescribing proof of electronic service, the Judicial Council proposal recommends enacting a new C.C.P. section, 1013b, that will prescribe proof of electronic service. This could cause confusion in some cases since section 1013a is cross-referenced in a number of statutes. (See, e.g., C.C.P. §§405.23, 594(b), and 684.220(c); Civ. Code §1719(g); Gov. Code §915.2(c); Labor Code §3082; and Prob. Code §1261.) The fact that section 1013a is cross-referenced in those statutes, and that new section 1013b will not be, may lead some attorneys and courts to conclude</p>	<p>which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded,” italics added].)</p> <p>The committee also viewed providing information about the electronic service provider (“EFSP” as unnecessary because EFSPs, in effect, step into the shoes of the postal service for purposes of electronic service. Just as the proof of service under section 1013a does not require identification of the mail carrier used to effect service by mail, the proof of electronic service would not identify the EFSP used to effect electronic service.</p> <p>The committee agrees that statutes referencing section 1013a would need to be updated to include references to proposed new section 1013b, where appropriate. It determined that this approach was preferable to adding proposed new section 1013b to section 1013a because it will ultimately provide for greater clarity in the law. It will also allow the committee to examine each statute to ensure that accompanying references to “mail” are replaced with “serve,” where appropriate. The committee intends to undertake this review in recommending additional modernization proposals next year.</p>

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			<p>that service under those statutes cannot be made electronically.</p> <p>(4) There are special provisions for service of papers under title 9 (§§680.010-724.260) of the Code of Civil Procedure, the Enforcement of Judgments Law. To avoid confusion about the application of section 1010.6 to service of papers under title 9, the council should consider appropriate proposed amendments to chapter 4 (§§684.010-684.310) of division 1 of title 9, regarding service of papers. It should be noted that the council has specific rulemaking authority under title 9 (C.C.P. §681.030) and that the California Law Revision Commission has continuing authorization to review and make recommendations concerning enforcement of judgments (C.C.P. §681.035).</p> <p>(5) I strongly support amending C.C.P. section 664.5 to substitute “serve” for “mail” because of a conflict between section 664.5 and the California Rules of Court. Under C.R.C. rules 8.104(a)(2) (unlimited cases) and 8.822(a)(2) (limited cases), any manner of service of notice of entry of judgment permitted by the Code of Civil Procedure, including electronic service when permitted under C.C.P. section 1010.6 and C.R.C. rules 2.250-2.261, is sufficient to trigger the running of the time to file a notice of appeal. Rules 8.104(a)(2) and 8.822(a)(2) conflict with C.C.P. section 664.5, which requires a party or the clerk to “mail” (not “serve”) notice of entry</p>	<p>This recommendation is outside the scope of this legislative proposal as circulated. The committee will take it under consideration in reviewing additional legislative proposals to modernize the Code of Civil Procedure next year.</p> <p>The committee appreciates this support.</p>

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			of judgment.	
6.	Orange County Bar Association by Todd G. Friedland President	AM	<p>CCP Section 1010.6(a) authorizes service by electronic means. Specifically, 1010.6(a)(2) addresses acceptance of electronic service, and 1010.6(a)(3) allows the court to serve its documents electronically. The proposed amendments to both of these provisions would include “other person[s].” The definitions at 1010.6(a)(1)(A) as proposed, and currently (B) and (C) mention “other person,” but provide no guidance. For purposes of clarification, it is suggested that the language of the section or of the Advisory Committee Comments, indicate who is contemplated as an “other person.” It is believed this clarification is of increased importance, given subsequent provisions of the section dealing with court-ordered electronic service.</p> <p>Further, subdivisions (a)(1)(B) and (C) indicate that “a party or other person” has authorized electronic service. This appears consistent with the proposed language for inclusion in 1010.6(a)(2) and (3) where either a party or other person has agreed to electronic service, but not where the court has ordered such service. It is suggested thought be given as to whether the use of “authorized” is accurate or desirable in subdivisions (a)(1)(B) and (C).</p> <p>Additionally, the discussion of these particular amendments notes, at page 5 of the proposal,</p>	<p>The committee appreciates this input, but declines to pursue this suggestion. The term “other person” is intended to encompass a variety of different individuals, depending on case type, who are not parties to the proceedings (e.g., grandparents, siblings, caregivers, and other adult relatives, among others, in juvenile cases). Because this is a legislative proposal, the committee cannot add an advisory committee comment. It also has concerns about trying to identify the full range of individuals contemplated by the statute. However, the committee will consider developing an implementing rules proposal that would amend the rules to provide further guidance on this issue.</p> <p>The committee declines to pursue this suggestion. The term “authorized” is not intended to refer to whether the party or other person has consented to electronic service. Instead, it refers to the electronic service address that the party or other person has provided for the purpose of receiving documents served electronically, regardless of whether electronic service is permissive or mandatory.</p> <p>The committee agrees and has incorporated this suggestion into the proposal by revising the</p>

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			<p>that the mandatory electronic service imposed by 1010.6(a)(2) and (3) would apply, “to parties and other persons only if they are represented.” This is not clear from the proposed language. To avoid confusion, it is suggested that the word “represented” be inserted before “other person” in the respective provisions providing for court-ordered electronic service.</p> <p>Section 1010.6(a)(5) and (b)(3) apply to the effective dates of service and filing, respectively. As written, the proposed language is silent as to service or filing made at midnight. Further, in both instances, the proposed language uses the concept of a court day. In connection with service, this poses a problem as service, traditionally, may be made on any day. As to filing, this could pose a problem were the language interpreted as allowing filing only on a court day, that is, one might dispute not the effective date of filing, but the very effectiveness of filing.</p> <p>For these reasons, it is suggested that a version of the language of the Orange County Superior Court pilot program as to date of filing, be adopted as to both service and filing. Assuming the concept of “court day” is retained in connection with service, the following is provided for consideration: Electronically [served – in the case of 1010.6(a)(5)] [filed – in the case of 1010.6(b)(3)] documents [served] [filed] prior to midnight on a court day will be</p>	<p>proposed amendment to section 1010.6(a)(2) and (3) to provide “on a represented party or other <i>represented</i> person.” (Italics added.)</p> <p>The committee agrees and has revised the proposal to address documents that electronically served and filed at 12:00 a.m. and on non-court days.</p>

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			<p>deemed [served] [filed] as of that day. Filing occurs at the time the document is received by the court and a confirmation of receipt is created. Any document electronically [served] [filed] at or after midnight, or filed on a noncourt day, will be deemed [served] [filed] on the next court day.</p> <p>Request for Specific Comments 1 - For the reasons set forth above, the proposal does not address the stated purpose. Further, there is concern with the inconsistencies posed by the provisions proposed for codification and CRC Rule 2.251.</p> <p>Specifically, the proposed language at 1010.6(a)(2) and (3) leads a party to expect either an agreement or a court order before they would be subject to mandatory electronic service. This, however, is not the case per Rule 2.251(b)(1)(B) which provides that the act of electronically filing any document with the court is evidence that the party has agreed to accept such service. This has proven to be an unhappy trap for litigants and their counsel in litigation brought in the Orange County courts where electronic filing is mandatory. These proposals are made to facilitate and encourage greater use of electronic filing. Accordingly, without some acknowledgment of these inconsistencies and attendant changes to the provisions of the code section or the Rule, this will continue to be a potential trap, growing in</p>	<p>This suggestion is outside the scope of this legislative proposal, as circulated. The committee may consider this recommendation in developing implementing rules proposals. The committee further notes that rule 2.251(b)(1)(B)—which provides that “[t]he act of e-filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court”—does not apply to self-represented litigants. (See Cal. Rules of Court, rule 2.251(b)(1)(B) [“This subparagraph (B) does not apply to self-represented parties; they must affirmatively consent to electronic service under subparagraph (A)”].) This means that self-represented litigants must provide separate consent to both electronic filing <i>and</i> service.</p>

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			<p>parallel with electronic filings.</p> <p>It is urged that, after the proposed amendments are finalized, the forgoing provisions of Rule 2.251, together with other of its provisions such as (h)(4) utilizing “close of business,” be reviewed to avoid conflicts with relevant statutes and ensure consistency in this area.</p> <p>2- CCP Section 1010.6(a)(5) and (b)(3) should provide that documents electronically served and filed up until midnight be deemed served or filed on that day. Please see comments above in the general discussion as to proposed language, time, and “court day.”</p>	<p>The committee agrees and intends to develop a rules proposal to implement the legislation, if enacted.</p> <p>The committee agrees and has revised the rules proposal to incorporate the suggestions by specifically addressing documents that are electronically filed and served at 12:00 a.m. and on non-court days.</p>
7.	State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco	A	<p>As discussed below, CAJ agrees with the proposed amendments.</p> <p>CAJ agrees with the proposed amendments to section 1010.6, requiring that the person filing electronically signed documents maintain custody of the original signed documents only until final disposition of the case, rather than indefinitely as it is presently required. CAJ supports the use of electronic signatures under the requirements that the electronic signature satisfy the procedures, standards and guidelines of the Judicial Council, to be consistent with the language in Government Code Section 68150(g).</p> <p>CAJ agrees that the amendments to</p>	<p>The committee appreciates the input of the State Bar Committee on Administration of Justice.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>section 1010.6 are necessary to provide a consistent, effective date of filing, so that any document received electronically by the court before midnight on a court day shall be deemed to have been filed on that court day, and any document received after midnight is deemed to have been filed on the next court day. CAJ believes this is more clear than the current requirement that documents be received “by the close of business” which may be 5:00 p.m., or earlier, and is often changing due to budget considerations of the courts who are limiting filing counter times.</p> <p>CAJ agrees that the proposed amendments to sections 664.5 and 1011 to reference “service” instead of “mail” are a necessary update to the language, and agrees that the recognition of electronic service as a permissible method of service in section 1011 should be added as proposed.</p> <p>CAJ agrees that the new section 1013b is sufficient to address proof of service requirements as to electronic service.</p> <p>Our specific comments as solicited are as follows:</p> <p><i>Does the Proposal appropriately address the stated purpose?</i></p> <p>CAJ agrees that the proposals as stated</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>do address the purpose, which is in major part to update the Code of Civil Procedure to properly address electronic filing and electronic service issues.</p> <p><i>Should the Code of Civil Procedure Section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?</i></p> <p>CAJ agrees that documents electronically filed and served up until midnight should be deemed filed or served on that day. CAJ discussed an alternative 5:00 p.m. cut-off time for electronic filing and electronic service. In discussing this, members of CAJ agreed that a midnight deadline promotes more conformity and consistency. Members referenced the Los Angeles County and Orange County e-filing systems, as well as the federal filing systems, which allow for a midnight deadline for e-filing citing their efficiency. Additionally, members cited the convenience factor of being able to file documents after standard business hours, especially for self-represented litigants who may need to be at work during ordinary court hours, and solo/small firm practitioners. Finally, members of CAJ placed significance on the fact that any risk of purported “abuse” of midnight filing deadlines is mitigated by the extended two court days allotted for electronic service</p>	<p>No response required.</p>

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			presently under Code of Civil Procedure Section 1010.6(a)(4), which remains unchanged in the proposal.	
8.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles	A	<ul style="list-style-type: none"> • <u>Does the proposal appropriately address the stated purpose?</u> <p>Yes.</p> <ul style="list-style-type: none"> • <u>Should Code of Civil Procedure section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?</u> <p>SCDLS believes midnight should be the cutoff time.</p> <p>Additional Comments</p> <p>SCDLS supports the proposal because it protects self-represented litigants by not requiring that they file electronically, and it protects indigent individuals represented by counsel because there the electronic filing fee will not be incurred by parties with an approved fee waiver.</p>	<p>The committee appreciates the input of the State Bar's Standing Committee on the Delivery of Legal Services.</p> <p>No response required.</p> <p>No response required.</p>
9.	Superior Court of Los Angeles County	AM	<ul style="list-style-type: none"> • With regard to the time deadline for electronic filing, we suggest that the views of the attorneys and advocates for self-represented litigants would be most 	The committee appreciates the input of the Superior Court of Los Angeles County.

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			<p>important.</p> <ul style="list-style-type: none"> • This proposal would provide cost savings due to a likely reduction in staff hours currently spent serving large numbers of the public at filing windows and processing paper documents and files. • Making this law effective one year after approval would be sufficient for implementation in LASC. • We believe it would work well in larger courts (100 judicial officers or more). We have no comment regarding smaller courts. • Removing the time of electronic service from the proof of electronic service could cause difficulties if the proof of service is challenged by way of motion as there would be no way for the judicial officer to determine the time and date of service other than by declaration or sworn testimony. This could cost the court money in terms of judicial time spent on this issue. 	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>The committee understands this concern. By amending the cut-off time for the effective date of electronic service to midnight, it is expected that the exact time of electronic service will be an issue in 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.</p>
10.	Superior Court of Orange County Civil and Probate Managers by Bryan Chae Principal Analyst	NI	One of the requirements is that if the court wants to use eFiling Service Providers, they must provide more than one. While I think the purpose of this is prevent the monopolization of eFiling services by one private company, this rule does not effectively eliminate that. EFSPs frequently specialize. For example, one	The committee appreciates the input from the Superior Court of Orange County’s Civil and Probate Managers. The committee declines to pursue this recommendation at present because it is outside the scope of the proposal, as circulated. However, the committee will take this suggestion under consideration next year. Meanwhile, courts

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			company may only file Family cases and another Civil. If those were the only 2 EFSPs, they still have effective monopolies.	may take this into consideration when certifying EFSPs and deciding whether to require electronic filing. Postponing mandatory e-filing is always an option if there are insufficient EFSPs for each case type to provide for a competitive electronic filing environment.
11.	Superior Court of Orange County Family Law and Juvenile Court Managers by Michelle Wang Program Coordinator Specialist	NI	Would government agencies be exempt from maintaining original documents until “final disposition of the case” or is maintaining the electronic copy of documents sufficient?	<p>Similar to other electronic filers (with the exception described below for local child support agencies), government agencies would have two options when electronically filing documents signed under penalty of perjury: (1) electronically signing the document under the standards and guidelines developed by the Judicial Council, or (2) printing out the document, physically signing it, and maintaining the original until final disposition of the case. Government agencies would not be required to maintain the original documents if they electronically sign documents under option (1). These proposed amendments are intended to facilitate e-filing, while still ensuring that signatures made under penalty of perjury may be verified and validated if their authenticity comes into question during the pendency of the proceeding.</p> <p>As noted above, Family Code section 17400(b)(3) provides an exception for “pleadings signed by an agent of the local child support agency under penalty of perjury.” These pleadings may be maintained “by way of an electronic copy in the Statewide Automated Child Support System.” They must be retained “for the period of time</p>

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				prescribed by subdivision (a) of Section 68152 of the Government Code.”
12.	Superior Court of San Bernardino County by Kelly McNamara Managing Attorney	AM	The proposed changes are a good start, but do not go far enough in addressing the obstacles faced by litigants who are indigent or otherwise entitled to file and obtain copies of forms at no cost, such as petitioners for domestic violence restraining orders. Until and unless the requirement to print and provide a "wet" signature is eliminated entirely, these filers will see minimal (if any) benefit from the proposed changes. The current legislation shifts the cost burden to these litigants (paper, toner, etc.) and presents an obstacle to access that many are unable to overcome. Until this obstacle is removed, the legislation does nothing to promote equal access, and I would be unable to support it.	The committee appreciates this input and shares the concern about promoting access for indigent litigants. It expects that the proposed electronic signature requirements will ultimately benefit indigent litigants, who would not be required to print and retain the original “wet” signature if they elect to electronically sign forms. This means that if they fill out the forms online, they would be able to electronically sign and electronically file the document without ever printing it out. In developing the standards and guidelines for electronic signatures in collaboration with the Court Executives Advisory Committee, the committee will keep the needs of indigent and self-represented litigants in mind to ensure that the electronic signature requirements are accessible to all litigants. Judicial Council forms should also be revised to implement the legislation and allow for the application of electronic signatures to forms that require signatures under penalty of perjury.
13.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comment.	The committee appreciates the Superior Court of San Diego County’s support.
14.	Hon. Rebecca Wightman Commissioner Superior Court of San Francisco	AM	I am absolutely in favor of legislation that will accomplish the items identified in the Executive Summary of the proposal.	The committee appreciates Commissioner Wightman’s support.

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	Commentator	Position	Comment	Committee Response
	County		<p>I listed "agree if modified" only because it was unclear from the proposal as to whether it addressed an ongoing problem that has been occurring with one of the biggest institutional filers in the area of child support proceedings in connection with CRC 2.257 (re: retention of documents filed electronically that are signed under penalty of perjury). This has been extremely problematic in the areas of signed proofs of service. Many child support agencies have "paperless" files, and there is a statewide practice of imaging originals for their records, but not keeping originals. There are also many thousands of documents that are signed by process servers (service of governmental complaints, OSCs re contempt) vs. state or county employees (Motions, Orders after Hearing), the latter being such that electronic signatures are likely not difficult to create). Several years ago, CRC 2.257 was an impediment to getting many local child support agencies to e-file more documents (through courts' e-filing systems), and we were told at that time that the corresponding CCP sections were being looked at and it was suggested that everything get addressed at once.</p> <p>I'm now wondering if anyone at the Judicial Council consulted with the AB1058 Program Manager on this topic.</p> <p>I apologize for not being particularly tech</p>	<p>No response required.</p> <p>The committee shares Commissioner Wightman's concerns that its proposal be reviewed by others with subject matter expertise relevant to family proceedings. To that end, the committee presented this proposal to the Family and Juvenile Law</p>

LEG16-10**Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>savvy, but it has been my experience that when certain general civil statutes are amended, in particular ones that also apply to Family Law, the area and operations of child support cases, are sometimes overlooked. Sometimes there is a need to carve out an exception for DCSS that works for their system, and other times there should not be an exception and they need to adjust. However, has the question/issue even been discussed during the process of preparing this proposal?</p> <p>I would ask that Fam/Juv consult with Judicial Council's AB1058 Program Manager and the State Dept. of Child Support Services (DCSS) to make sure that the proposal here goes far enough to accommodate their statewide system.</p>	<p>Advisory Committee for its input prior to circulation. No concerns were raised at the time about the proposed amendments related to electronic signatures. In addition, the Department of Child Support Services provided specific comment offering its general support of the proposal so long as it does not conflict with Family Code section 17400(b)(3); it does not, for the reasons stated above.</p> <p>Please see response above.</p>