



JUDICIAL COUNCIL OF CALIFORNIA

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R E P O R T T O T H E J U D I C I A L C O U N C I L

For business meeting on: September 21, 2018

Title	Agenda Item Type
Rules and Forms: Form for Withdrawal of Consent to Electronic Service	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve form EFS-006	January 1, 2019
Recommended by	Date of Report
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair	August 31, 2018
	Contact
	Andrea Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov Anne Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary

The Information Technology Advisory Committee and Civil and Small Claims Advisory Committee recommend adopting a new form for withdrawal of consent to electronic service. The purpose of the proposal is to comply with Code of Civil Procedure section 1010.6(a)(6), which requires the Judicial Council to create such a form by January 1, 2019.

Recommendation

The Information Technology and the Civil and Small Claims Advisory Committees recommend that the Judicial Council adopt form EFS-006, *Withdrawal of Consent to Electronic Service*, effective January 1, 2019. The text of the new form is attached at pages 5–6.

Relevant Previous Council Action

In 2017, the Judicial Council sponsored Assembly Bill 976, which amended provisions of Code of Civil Procedure section 1010.6 to (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, and (4) 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. The Legislature amended AB 976 to add a provision that requires the Judicial Council to create, by January 1, 2019, a form for a party or other person to withdraw their consent to permissive electronic service.

Analysis/Rationale

Code of Civil Procedure section 1010.6(a)(6) requires the Judicial Council to create a form for withdrawal of consent to electronic service by January 1, 2019. For the sake of consistency, the recommended form, EFS-006, *Withdrawal of Consent to Electronic Service*, is modeled after existing form EFS-005-CV, *Consent to Electronic Service and Notice of Electronic Service Address*.

Policy implications

The proposed form does not have any significant policy implications. The form merely creates a formal mechanism for parties to use to withdraw consent to permissive electronic service.

Comments

Four commenters responded to the invitation to comment, either agreeing with the proposal or agreeing as modified. Three of the commenters responded to the invitation to comment's request for specific comments.

Clarifying use of the form for permissive electronic service only. The Superior Court of California, County of Los Angeles, suggested that form EFS-006 be modified to add the following under the title: "(This form may not be used for electronic service required by local rule or court order.)" The committees decided to incorporate the modification into form EFS-006 with the addition of the word "mandatory" to describe "electronic service," so the notice states, "This form may not be used for mandatory electronic service required by local rule or court order." The form is applicable only to permissive electronic service and not to mandatory electronic service. Accordingly, the modification adds clarity on the proper use of the form.

Responses to the request for specific comments. The invitation to comment requested specific comments on the following questions:

- Proposed form EFS-006 includes a proof of electronic service on page 2 of the form. There is a separate proof of electronic service form, POS-050/EFS-050, available as well. In light of the availability of POS-050/EFS-050, is it necessary to include a proof of electronic service as part of EFS-006?
 - If not, should language be included on EFS-006 directing the completion of a proof of service. For example, "You must complete a proof of service for this form. You may use a Judicial Council form for the proof of service. If you

electronically serve the form, you may use form POS-050/EFS-050. If you serve by mail, you may use form POS-030.”

The Superior Court of California, County of Ventura, commented, “It is not necessary to include a proof of electronic service as part of EFS-006 and is not helpful if limited to service by electronic service.” The court recommended that the form be modified accordingly and that the example language regarding proof of service included in the second bullet point, above, be added to the form.

Both the Superior Courts of Los Angeles and San Diego Counties recommended that the proof of electronic service be retained on page 2 of the form. The Los Angeles court commented, “The proof of electronic service should be included on page two of EFS-006. It is useful to the filer and consistent with form EFS-005-CV.” The San Diego court commented, “Since this form is likely to be used more often by self-represented litigants, it seems beneficial to include the [proof of service] and more convenient for the litigant.” The San Diego court also commented that if the decision is to remove the proof of service, the proposed language for directing the completion of a proof of service is appropriate and clear.

The committees decided to keep the proof of electronic service with form EFS-006 because having it included would be more convenient for litigants. Although some litigants may elect to use form POS-030, *Proof of Service by First-Class Mail—Civil*, instead of the proof of electronic service included with form EFS-006 and, thus, will have to look up an additional form, removing the proof of electronic service from form EFS-006 would require *all* litigants to look up a separate proof-of-service form.

Internal comments concerning the ability to withdraw consent at any time by filing a form with the court. Both committees expressed concern with the provision in Code of Civil Procedure section 1010.6(a)(6) that states, “A party or other person who has provided express consent to accept service electronically may withdraw consent *at any time by completing and filing with the court* the appropriate Judicial Council form.” (Italics added.) The committees were concerned that this provision could lead to gamesmanship, with a party dropping consent around key deadlines, leaving the other party with insufficient notice. This concern may lead to a legislative proposal in the future.

Alternatives considered

The committees did not consider the alternative of not creating EFS-006, *Withdrawal of Consent to Electronic Service*, because statute mandates the creation of the form.

Fiscal and Operational Impacts

The new form is unlikely to result in any significant costs to or operational impacts on the courts.

Attachments and Links

1. Form EFS-006, *Withdrawal of Consent to Electronic Service*, at pages 5–6

2. Chart of comments, at pages 7–9
3. Link A: Code Civil Proc.,
§ 1010.6, [http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP
§ionNum=1010.6](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=1010.6)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council 2018-06-12
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	JUDICIAL OFFICER:
WITHDRAWAL OF CONSENT TO ELECTRONIC SERVICE	DEPARTMENT:
Notice: This form may not be used for mandatory electronic service required by local rule or court order.	

1. The following self-represented party or the attorney for:
- a. plaintiff (name):
 - b. defendant (name):
 - c. petitioner (name):
 - d. respondent (name):
 - e. other (describe and name):

withdraws consent to electronic service of notices and documents in the above-captioned action.

2. The mailing address for service on the person identified in item 1 is (specify):
- Street:
 City:
 State: Zip:

3. All notices and documents in the above-captioned action must be served on the person identified in item 1 at the address in item 2 as of (date):

Date: _____

_____ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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(Note: If you serve Withdrawal of Consent to Electronic Service by mail, you should use form POS-030, Proof of Service by First-Class Mail–Civil, instead of using this page.)

**PROOF OF ELECTRONIC SERVICE
WITHDRAWAL OF CONSENT TO ELECTRONIC SERVICE**

1. I am at least 18 years old.

My residence or business address is (specify):

2. I electronically served a copy of the *Withdrawal of Consent to Electronic Service* as follows:

a. Name of person served:

On behalf of (name or names of parties represented, if person served is an attorney):

b. Electronic service address of person served:

c. On (date):

Electronic service of the *Withdrawal of Consent to Electronic Service* on additional persons is described in an attachment.

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

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

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Technology: Rules Modernization Project Proposed Rules

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

#	Commentator	Position	Comment	Committee Response
1	Orange County Bar Association By Nikki P. Miliband, President P.O. Box 6130 Newport Beach, CA 92658 Tel: 949-440-6700 Fax: 949-440-6710	A	No specific comment.	The committees appreciate the support.
2	Superior Court of California, County of Los Angeles By Sandra Pigati-Pizano, Management Analyst Management Research Unit 111 N. Hill Street, Room 620 Los Angeles, CA 90012 Tel: 213-633-0452	AM	Suggested Modification: Form EFS-006 Under the title: Withdrawal of Consent to Electronic Service add: (This form may not be used for electronic service required by local rule or court order.) Request for Specific Comments: Proposed form EFS-006 includes a proof of electronic service on page 2 of the form. There is a separate proof of electronic service form, POS-050/EFS-050, available as well. In light of the availability of POS-050/EFS-050, is it necessary to include	The committees appreciate the support, suggested modification, and responses to the request for specific comments. The suggested modification adds clarity to the form and the committee will recommend it with a minor addition of the word “mandatory” before “electronic service.”

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			a proof of electronic service as part of EFS-006? The proof of electronic service should be included on page two of EFS-006. It is useful to the filer and consistent with form EFS-005-CV.	
3	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer 1100 Union Street San Diego, CA 92101	A	Q: Proposed form EFS-006 includes a proof of electronic service on page 2 of the form. There is a separate proof of electronic service form, POS-050/EFS-050, available as well. In light of the availability of POS-050/EFS-050, is it necessary to include a proof of electronic service as part of EFS-006? Since this form is likely to be used more often by self-represented litigants, it seems beneficial to include the POS and more convenient for the litigant. Q If not, should language be included on EFS-006 directing the completion of a proof of	The committees appreciate the support and responses to the request for specific comments.

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			<p>service. For example, “You must complete a proof of service for this form. You may use a Judicial Council form for the proof of service. If you electronically serve the form, you may use form POS-050/EFS-050. If you serve by mail, you may use form POS-030.”</p> <p>If the committee elects to remove the POS on page two, then the proposed language is appropriate and clear.</p>	
4	<p>Superior Court of California, County of Ventura By Julie Camacho, Court Manager 800 S. Victoria Avenue Ventura CA, 93006 Email: julie.camacho@ventura.courts.ca.gov</p>	AM	<p>It is not necessary to include a proof of electronic service as part of EFS-006 and is not helpful if limited to service by electronic service.</p> <p>Yes, the indicated language regarding proof of service should be added to the form.</p>	<p>The committees appreciate the support and responses to the request for specific comments.</p>