



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

Title

Appellate Procedure: Ensure Consistency
Between E-filing Rules and Court Practices

Agenda Item Type

Action Required

Effective Date

January 1, 2017

Rules, Forms, Standards, or Statutes Affected

Amend title 8 (Cal. Rules of Court, rules 8.70,
8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78,
8.79, and 8.204)

Date of Report

August 26, 2016

Recommended by

Information Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

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Executive Summary

The Information Technology Advisory Committee and the Appellate Advisory Committee propose changes to the appellate rules to reflect the e-filing practices used by the appellate courts. These changes will eliminate conflicts between appellate court local rules and the rules of court, and ensure consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable.

Recommendation

The Information Technology Advisory Committee (ITAC) and the Appellate Advisory Committee (AAC) recommend that the Judicial Council, effective January 1, 2017:

- Revise rule 8.70 to eliminate outdated references to e-filing “projects” in the appellate courts.
- Reorganize the appellate e-filing rules so that the rules pertaining to e-filing come first, followed by the e-service rules.
- Renumber rule 8.71 as rule 8.78 and revise it to apply only to e-service, with e-filing covered under new rule 8.71. (A detailed description of proposed renumbered rule 8.78 is given below.)
- Create new rule 8.71, implementing mandatory e-filing in the appellate courts; exempting self-represented parties from mandatory e-filing unless they agreed to e-file, by e-filing a document or otherwise; exempting trial courts from e-filing unless they agreed to e-file; and requiring appellate courts to have procedures for parties to ask to be excused from e-filing upon a showing of undue hardship or significant prejudice.
- Delete rule 8.72, which specifies which documents may be filed electronically, with some of its provisions moved into new rule 8.71.
- Renumber rule 8.73 as rule 8.79 and revise it to apply only to orders for e-service. (A detailed description of proposed renumbered rule 8.79 is given below.)
- Renumber rule 8.74 as rule 8.72 and revise it to reflect that e-filing is proposed to be mandatory.
- Renumber rule 8.75 as rule 8.73 and add a provision stating that, whenever possible, a court should include in its contract with an electronic filing service provider a requirement that the provider agree to waive any fee to be charged to a party upon a court order for waiver.
- Renumber rule 8.76 as rule 8.74, add a requirement that a court’s required electronic filing format be text-searchable while maintaining original document formatting, and add a standard for pagination of e-filed documents.
- Renumber rule 8.77 as rule 8.75.
- Renumber rule 8.78 as rule 8.76.
- Renumber rule 8.79 as rule 8.77, add language requiring the court to “arrange for” confirmation of filing to an electronic filer, delete the requirement that such a notice include notice of any fees assessed for the filing, and revise the provision regarding delayed delivery of a filing due to technical problems with the court’s electronic filing

system, allowing a filer who misses a deadline to file late and move to have the document accepted as timely filed.

- Revise rule 8.78, renumbered from existing rule 8.71, (1) so a party who files a document electronically will be able, by filing a notice with the court and serving it on the other parties, to indicate that the party prefers to be served paper copies; (2) to apply the rule to nonparties who agree to or otherwise are required to accept electronic service or to electronically serve documents; (3) to state that a proof of electronic service need not state that the person making service is not a party; and (4) to delete the requirement that a proof of electronic service state time of service.
- Revise rule 8.79, renumbered from existing rule 8.73, to apply only to orders for electronic service, to distinguish between orders to electronically serve other parties and orders for a party to accept electronic service, and to delete the subdivision which prohibited the court from ordering a party to electronically file or serve documents if the party objected to paying the electronic filing service provider fee.
- Revise rule 8.204 to require that briefs be consecutively paginated with Arabic numerals, with the cover page as page 1, and allowing the number to be suppressed from the cover page, and to require that briefs submitted in paper form be submitted unbound unless otherwise provided by local rule or court order.

Previous Council Action

Rules 8.70 to 8.79, the existing appellate e-filing rules, were adopted effective July 1, 2010. Some provisions have been amended since that time.

Rationale for Recommendation

When the rules governing e-filing in the appellate courts—California Rules of Court, rules 8.70 to 8.79—were first adopted in 2010, the Courts of Appeal had just begun to implement e-filing systems. By the end of this year, it is anticipated that all six appellate districts of the Courts of Appeal will have implemented systems making e-filing and e-service mandatory for most parties in most cases; the Supreme Court will follow in 2017. Many of the originally adopted e-filing rules are simply no longer applicable, such as those referring to e-filing pilot projects. In other instances, the rules need to be amended to reflect the current e-filing practices and preferences of the appellate courts. The Joint Appellate Technology Subcommittee (JATS), a joint subcommittee of the Appellate Advisory Committee and the Information Technology Advisory Committee, undertook to propose revisions to the appellate e-filing rules so that they do not conflict with the practices of the appellate courts and, where the experience of those courts has shown that a certain practice is desirable, amend the rules to ensure statewide consistency. The committees recommend adopting certain rule changes now to reflect existing practices and needs, but to wait on other proposals until all the appellate courts—including the Supreme Court—have implemented e-filing and can better evaluate the desirability of additional statewide

e-filing rules. The committees recommend adoption of these proposed amendments to bring the appellate e-filing rules up to date and into conformity with current e-filing practices.

Mandatory e-filing

The proposed amendments to the e-filing rules recognize that in those appellate courts that have already implemented e-filing, e-filing is mandatory in most cases. Proposed rule 8.71 states that except as otherwise provided in the rules, in the local rules of the reviewing court, or by court order, all parties are required to file all documents electronically. Exemptions are created for self-represented parties and trial courts, who are not required to e-file, but may agree to do so. Under the proposed language for rule 8.71(d), a party must be excused from e-filing upon a showing of undue hardship or significant prejudice, and each court must also have a process allowing a party to apply for such an excuse.

The existing requirements for a court to give notice when a document is received by the court and when a document is accepted or rejected for filing are revised to reflect the actual practice of the courts and electronic filing service providers, which is that the notice is automatically generated by the e-filing system. Under amended rule 8.73(d)(3) (renumbered from rule 8.75(d)(3)) and 8.77(a), the court will “arrange” to give notice to the electronic filer of receipt, filing or rejection of filing.

The amendments to the rules also change the procedure used when a party is prevented from timely filing a document because of technical problems with the electronic filing system. Under amended rule 8.77(d) (renumbered from 8.79(d)), a new procedure is created allowing a party to file a document as soon as practicable, on paper or electronically, accompanied with a motion asking that the document be accepted as timely filed.

Revised rules for e-service

Under the existing rules governing e-service, a party is automatically considered to have consented to receive electronic service of documents if that party electronically files any document with the court. The amendments to rule 8.78 (renumbered from rule 8.71) will allow a party to opt out of e-service by filing a notice with the court and serving it on the other parties, even if that party chooses to electronically file documents.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated from April 15, 2016, to June 14, 2016, in the regular spring 2016 comment cycle. Comments from 12 commentators were received. Four commentators agreed with the proposal, none disagreed, seven agreed if modified, and one suggested modifications but did not indicate a position on the proposal. The full comment chart, showing the full text of the comments received and the committees’ responses, is attached at pages 29–58.

E-filing by self-represented parties. To protect self-represented parties who may not have ready access to the resources needed to e-file documents, proposed rule 8.71 exempts self-represented parties from mandatory e-filing. In the proposed language of rule 8.71(b) as circulated for comment, a self-represented party could only opt in to e-filing by filing a notice with the court and serving it on the other parties. The California Appellate Court Clerks Association (CACCA) noted that this places an unnecessary burden on self-represented parties who wish to use e-filing, and on the courts as well. CACCA suggested that subsection 8.71(b)(3) be revised to provide that a self-represented party can agree to e-filing simply by electronically filing a document with the court. Based on this comment, the committees have revised proposed rule 8.71(b)(3) to allow a self-represented party to agree to e-filing by electronically filing any document.

Comments from both CACCA and the Court of Appeal, Second Appellate District, noted that rule 8.71(b)(3) as circulated prohibited self-represented parties, in cases where there are both self-represented and represented parties, from e-filing unless the party affirmatively agreed to e-file. The committees have revised proposed rule 8.71(b)(3) to delete the requirement that self-represented litigants file in paper form, but to provide that a self-represented party in such a case may file documents in paper form.

Excuse from e-filing. The Court of Appeal, Second Appellate District (the Second Appellate District), suggested that in rule 8.71(d) the requirement for a court to have a process for parties to apply for relief from mandatory e-filing should be replaced with a specific requirement that the court excuse a party on the motion of that party showing good cause or undue prejudice. The State Bar Standing Committee on the Delivery Services commented that greater specificity as to procedure would make it easier for those parties needing exemption to apply. Because different Courts of Appeal have different practices and different local rules as to how a party requests exemption from e-filing, the committees declined to make the suggested change.

Publication of e-filing requirements. The Second Appellate District commented that the rule 8.72(a) requirement for each appellate court to publish its local e-filing requirements (renumbered from rule 8.74(a)) is unnecessary, as any variations in e-filing requirements are done by local rule, which must be published. The committees believe that it is valuable to state, in the context of the rules of court specifically regarding appellate e-filing, that any local requirements for e-filing must be published. The committees therefore declined to revise the proposed rule as suggested.

Contracts with e-filing service providers. Proposed rule 8.73(b) (renumbered and revised from rule 8.75(b)) would expressly allow a court's contract with an electronic filing service provider to require that the service provider, upon court order, waive an electronic filing service provider fee that would normally be charged to an electronic filer. This new provision is meant to encourage courts to include this protection in their contracts with electronic filing service providers. The new language takes a different approach to protecting parties for whom these fees may be a hardship: it will delete the language of existing rule 8.73(a)(2)(B), which prohibits a

court from ordering a party to electronically file or serve documents if that party objects to paying the electronic filing service provider fee.

The Second Appellate District suggested that the new language be revised to read, “The contract may require that the electronic filing service provider waive a fee that normally would be charged to a party when the court orders that the filing fee be waived for that party.” The committees declined to make this revision, as the intent is to allow the court to decide separately whether an electronic filing service provider’s fee should be waived in a particular instance, whether or not the filing fee has been waived.

The Family Violence Appellate Project suggested strengthening the language to say that, “Whenever possible, the contract should require” fee waiver upon court order. As this may provide greater protection to parties in need of it, the committees have revised the rule with the suggested language.

How notice is given when documents are received or filed. The proposed rules as circulated renumbered but otherwise left unchanged the provisions of rules 8.75(d) (renumbered 8.73(d)) and 8.79(a) (renumbered 8.77(a)), which state requirements for courts to send notice to electronic filers when documents are received and when they are accepted or rejected for filing. Both CACCA and the Second Appellate District commented that in practice, such notices are automatically generated by the e-filing system. The committees have revised these rules to provide that the court will “arrange” to provide such notice, thus retaining the requirement for notice but providing flexibility as to how the notice is delivered, now and in the future as technology changes.

The Court of Appeal, Third Appellate District (in a comment included in CACCA’s comments), and the Second Appellate District both commented that rule 8.77(a)(2)(C), which requires that when a document has been filed, notice to an electronic filer must specify the fees assessed for the filing, goes beyond what the current e-filing systems can do. Both of the courts suggested deleting the provision, and the committees have revised the rule to do so.

Formatting issues. The amended rules make several changes regarding the required format for documents e-filed in the appellate courts, and there were many comments on these changes.

In rule 8.74(b) (renumbered from rule 8.76(b)) and rule 8.204(b)(7), the rules put in place a new requirement for the pagination of electronically filed documents, applicable also under rule 8.204 to all briefs, whether electronically or paper filed. The new requirement states that documents/briefs are to be numbered starting with page one on the cover or first page, and using only Arabic numerals. The requirement mirrors that which will apply to various documents filed in trial courts under rules 2.109, 3.1110, and 3.1113, under the Rules Modernization Phase 2 proposal, SPR16-25. Existing rule 8.204(b)(7) allows the tables and body of an appellate brief to have different numbering systems. This means the page numbering of an electronically filed brief, such as a PDF, differs from the numbering shown on the pages—complicating the court’s

task in reviewing these documents. The change is intended to make sure that PDF (or other electronic document format) page numbers match those shown on the pages.

The Second Appellate District, with the support of CACCA, suggested that the language of both rules be revised to say that “the page number may be suppressed and need not appear on the cover page.” This suggested change may also help to address the concern of the California Court Reporters Association (CCRA) which, in its comment, read the rule as allowing a cover page not to be numbered—which would leave the page numbering of an electronic document out of sync with what is shown on the pages. The committees have revised these rules to make this change.

Although the subject of how paper briefs are to be bound was not addressed in the proposed rules as circulated, both CACCA and the Second Appellate District see the amendment of rule 8.204 (b)(8) as a minor change unlikely to create controversy, and as an opportunity to bring that rule into conformance with the current preference of most appellate courts, which is that briefs be submitted unbound to assist in scanning them into electronic form. To ensure that each appellate court can continue to set its own policy as to whether briefs should be bound or unbound, the committees have made the suggested change to rule 8.204 (b)(8) to state that paper briefs should be submitted unbound, with the addition of language stating “unless otherwise provided by local rule or court order.”

The Second Appellate District further suggested that rule 8.204(b)(8) and (b)(10), together with rule 8.40, be revised to eliminate the requirements for cover color for paper briefs. The committees declined to make these newly proposed changes, which go beyond the scope of the proposed rules. Appellate local rules currently address this issue.

CCRA commented that the rules should specify further requirements for the electronic format of a reporter’s transcript, such as hyperlinks. CCRA also suggested that rule 8.75(d), renumbered but otherwise unchanged from rule 8.77(d), be revised to require a digital signature on an electronically submitted copy of a reporter’s transcript. Requirements specifically applicable to reporters’ transcripts are not recommended at this time. The committees recommend that any such changes be developed with input from court reporters and other affected parties.

Commentator D’vora Tirschwell, a writ attorney for the Court of Appeal, First Appellate District, commented that the rules should require descriptive bookmarking of electronically filed documents. Ms. Tirschwell further suggested that the rules require that electronically filed exhibits be submitted in “volumes” of no more than 300 pages each. JATS, in developing this proposal, specifically considered whether to address these issues, and decided to wait to take action until all of the appellate courts have had more experience implementing e-filing. The committees therefore declined to make these changes, but will be considering these issues in the future.

Alternatives considered

In addition to the alternatives considered as a result of the public comments discussed above, the committees considered whether this comprehensive revision of the appellate e-filing rules should be completely delayed until all of the appellate courts, including the Supreme Court, have implemented e-filing. Although on some topics, such as requirements for bookmarking electronic documents, the committees decided that further experience was needed before a rule should be proposed, the committees concluded that it was important to update the appellate e-filing rules in line with current practices. By doing so, the committees hope that courts and litigants will no longer face the confusion created when a statewide rule does not fit with existing practices.

Implementation Requirements, Costs, and Operational Impacts

Because this proposal is intended to update the rules of court in line with the e-filing practices already implemented in many appellate courts (and rolling out in others), and because trial courts are specifically exempted from mandatory appellate court e-filing, the proposal should not impose significant implementation requirements. To the extent the changes facilitate e-filing and e-service in the appellate courts, and ensure that the appellate courts receive e-filed documents in their preferred formats, they should provide some cost efficiencies.

Attachments and Links

1. Cal. Rules of Court, rules 8.70–8.79 and rule 8.204, at pages 9–28
2. Chart of comments, at pages 29–58

Rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204 of the California Rules of Court are amended, effective January 1, 2017, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 1. General Provisions

Article 5. E-filing

Rule 8.70. ~~Purpose, a~~Application, construction, and definitions

(a) Purpose

~~The purpose of the rules in this article is to facilitate the implementation and testing of e-filing projects in the Supreme Court and the Courts of Appeal.~~

~~(b)~~(a)Application

Notwithstanding any other rules to the contrary, the rules in this article govern filing and service by electronic means in the Supreme Court and ~~any the~~ Courts of Appeal ~~that elects to implement an e-filing project.~~

~~(c)~~(b)Construction

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

~~(d)~~(c)Definitions

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

(1) “The court” means the Supreme Court or ~~any a~~ Court of Appeal ~~that elects to implement an e-filing project.~~

(2) ~~A document may be in paper or electronic form.~~ A “document” is:

(A) Any filing submitted to the reviewing court, including a brief, a petition, an appendix, or a motion;

(B) Any document transmitted by a trial court to the reviewing court, including a notice or a clerk’s or reporter’s transcript; or

(C) Any writing prepared by the reviewing court, including an opinion, an order, or a notice.

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

- 1 (3) “Electronic service” is service of a document on a party or other person by
2 either electronic transmission or electronic notification. Electronic service
3 may be performed directly by a party, by an agent of a party including the
4 party’s attorney, through an electronic filing service provider, or by a court.
5
- 6 (4) “Electronic transmission” means the transmission of a document by
7 electronic means to the electronic service address at or through which a party
8 or other person has authorized electronic service.
9
- 10 (5) “Electronic notification” means the notification of a party or other person that
11 a document is served by sending an electronic message to the electronic
12 service address at or through which the party or other person has authorized
13 electronic service, specifying the exact name of the document served and
14 providing a hyperlink at which the served document can be viewed and
15 downloaded.
16
- 17 (6) “Electronic service address” of a party means the electronic address at or
18 through which the party has authorized electronic service.
19
- 20 (7) An “electronic filer” is a party filing a document in electronic form directly
21 with the court, by an agent, or through an electronic filing service provider.
22
- 23 (8) “Electronic filing” is the electronic transmission to a court of a document in
24 electronic form.
25
- 26 (9) An “electronic filing service provider” is a person or entity that receives an
27 electronic filing from a party for retransmission to the court or for electronic
28 service on other parties, or both. In submission of filings, the electronic filing
29 service provider does so on behalf of the electronic filer and not as an agent
30 of the court.
31

32 **Advisory Committee Comment**

33
34 The definition of “electronic service” has been amended to provide that a party may effectuate
35 service not only by the electronic transmission of a document, but also by providing electronic
36 notification of where a document served electronically may be located and downloaded. This
37 amendment is intended to modify the rules on electronic service to expressly authorize electronic
38 notification as a legally effective alternative means of service to electronic transmission. This
39 rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6,
40 effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156
41 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the
42 appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which
43 interpreted the rules as authorizing electronic transmission as the only effective means of
44 electronic service.
45

46 **Rule 8.71. Electronic service**

1 **(a) — Authorization for electronic service**

2
3 (1) — A document may be electronically served under these rules:

4
5 (A) — If electronic service is provided for by law or court order; or

6
7 (B) — If the recipient agrees to accept electronic services as provided by these
8 rules and the document is otherwise authorized to be served by mail,
9 express mail, overnight delivery, or fax transmission.

10
11 (2) — A party indicates that the party agrees to accept electronic service by:

12
13 (A) — Serving a notice on all parties that the party accepts electronic service
14 and filing the notice with the court. The notice must include the
15 electronic service address at which the party agrees to accept service; or

16
17 (B) — Electronically filing any document with the court. The act of electronic
18 filing is evidence that the party agrees to accept service at the electronic
19 service address that the party has furnished to the court under rule
20 8.76(a)(4).

21
22 (3) — A party that has consented to electronic service under (2) and has used an
23 electronic filing service provider to serve and file documents in a case
24 consents to service on that electronic filing service provider as the designated
25 agent for service for the party in the case, until such time as the party
26 designates a different agent for service.

27
28 (4) — A document may be electronically served on a nonparty if the nonparty
29 consents to electronic service or electronic service is otherwise provided for
30 by law or court order.

31
32 **(b) — Maintenance of electronic service lists**

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

38
39 **(c) — Service by the parties**

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

44
45 **(d) — Change of electronic service address**

1 ~~(1) A party whose electronic service address changes while the appeal or original~~
2 ~~proceeding is pending must promptly file a notice of change of address~~
3 ~~electronically with the court and must serve this notice electronically on all~~
4 ~~other parties.~~

5
6 ~~(2) A party's election to contract with an electronic filing service provider to~~
7 ~~electronically file and serve documents or to receive electronic service of~~
8 ~~documents on the party's behalf does not relieve the party of its duties under~~
9 ~~(1).~~

10
11 ~~(3) An electronic service address is presumed valid for a party if the party files~~
12 ~~electronic documents with the court from that address and has not filed and~~
13 ~~served notice that the address is no longer valid.~~

14
15 ~~(e) Reliability and integrity of documents served by electronic notification~~

16
17 ~~A party that serves a document by means of electronic notification must:~~

18
19 ~~(1) Ensure that the documents served can be viewed and downloaded using the~~
20 ~~hyperlink provided;~~

21
22 ~~(2) Preserve the document served without any change, alteration, or modification~~
23 ~~from the time the document is posted until the time the hyperlink is~~
24 ~~terminated; and~~

25
26 ~~(3) Maintain the hyperlink until the case is final.~~

27
28 ~~(f) Proof of service~~

29
30 ~~(1) Proof of electronic service may be by any of the methods provided in Code of~~
31 ~~Civil Procedure section 1013a, except that the proof of service must state:~~

32
33 ~~(A) The electronic service address of the person making the service, in~~
34 ~~addition to that person's residence or business address;~~

35
36 ~~(B) The date and time of the electronic service, instead of the date and~~
37 ~~place of deposit in the mail;~~

38
39 ~~(C) The name and electronic service address of the person served, in place~~
40 ~~of that person's name and address as shown on the envelope; and~~

41
42 ~~(D) That the document was served electronically, in place of the statement~~
43 ~~that the envelope was sealed and deposited in the mail with postage~~
44 ~~fully prepaid.~~
45

1 ~~(2) — Proof of electronic service may be in electronic form and may be filed~~
2 ~~electronically with the court.~~

3
4 ~~(3) — The party filing the proof of electronic service must maintain the printed~~
5 ~~form of the document bearing the declarant's original signature and must~~
6 ~~make the document available for inspection and copying on the request of the~~
7 ~~court or any party to the action or proceeding in which it is filed, in the~~
8 ~~manner provided in rule 8.77(c).~~

9
10 **~~(g) — Electronic service by or on court~~**

11
12 ~~(1) — The court may electronically serve any notice, order, opinion, or other~~
13 ~~document issued by the court in the same manner that parties may serve~~
14 ~~documents by electronic service.~~

15
16 ~~(2) — A document may be electronically served on a court if the court consents to~~
17 ~~electronic service or electronic service is otherwise provided for by law or~~
18 ~~court order. A court indicates that it agrees to accept electronic service by:~~

19
20 ~~(A) — Serving a notice on all parties that the court accepts electronic service.~~
21 ~~The notice must include the electronic service address at which the~~
22 ~~court agrees to accept service; or~~

23
24 ~~(B) — Adopting a local rule stating that the court accepts electronic service.~~
25 ~~The rule must indicate where to obtain the electronic service address at~~
26 ~~which the court agrees to accept service.~~

27
28 **Rule 8.71. Electronic filing**

29
30 **(a) Mandatory electronic filing**

31
32 Except as otherwise provided by these rules, the local rules of the reviewing court,
33 or court order, all parties are required to file all documents electronically in the
34 reviewing court.

35
36 **(b) Self-represented parties**

37
38 (1) Self-represented parties are exempt from the requirement to file documents
39 electronically.

40
41 (2) A self-represented party may agree to file documents electronically. By
42 electronically filing any document with the court, a self-represented party
43 agrees to file documents electronically.
44

(3) In cases involving both represented and self-represented parties, represented parties are required to file documents electronically; however, in these cases, each self-represented party may file documents in paper form.

(c) Trial courts

Trial courts are exempt from the requirement to file documents electronically, but are permitted to file documents electronically.

(d) Excuse for undue hardship or significant prejudice

A party must be excused from the requirement to file documents electronically if the party shows undue hardship or significant prejudice. A court must have a process for parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them in paper form.

(e) Applications for fee waivers

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

(f) Effect of document filed electronically

(1) A document that the court, a party, or a trial court files electronically under the rules in this article has the same legal effect as a document in paper form.

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

(g) Paper documents

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

Rule 8.72. Documents that may be filed electronically

(a) — In general

~~The court may permit electronic filing of a document by a party or trial court in any appeal or original proceeding unless the rules in this article or other legal authority expressly prohibit electronic filing.~~

(b) — Application for waiver of court fees and costs

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

3
4 ~~(e) — Orders, opinions, and notices~~

5
6 The court may electronically file any notice, order, opinion, or other document
7 prepared by the court.

8
9 ~~(d) — Effect of document filed electronically~~

10
11 ~~(1) — A document that the court, a party, or a trial court files electronically under~~
12 ~~the rules in this article has the same legal effect as a document in paper form.~~

13
14 ~~(2) — Filing a document electronically does not alter any filing deadline.~~

15
16 **Rule 8.73. Court order requiring electronic service or filing**

17
18 ~~(a) — Court order~~

19
20 ~~(1) — The court may, on the motion of any party or on its own motion, provided~~
21 ~~that the order would not cause undue hardship or significant prejudice to any~~
22 ~~party, order all parties to:~~

23
24 ~~(A) — Serve all documents electronically, except when personal service is~~
25 ~~required by statute or rule;~~

26
27 ~~(B) — File all documents electronically; or~~

28
29 ~~(C) — Serve and file all documents electronically, except when personal~~
30 ~~service is required by statute or rule.~~

31
32 ~~(2) — The court will not:~~

33
34 ~~(A) — Order a self-represented party to electronically serve or file documents;~~

35
36 ~~(B) — Order a party to electronically serve or file documents if the party~~
37 ~~would be required to pay a fee to an electronic filing service provider to~~
38 ~~file or serve the documents and the party objects to paying this fee in its~~
39 ~~opposition to the motion under (1); or~~

40
41 ~~(C) — Order a trial court to electronically serve or file documents.~~

42
43 ~~(3) — If the reviewing court proposes to make an order under (1) on its own motion,~~
44 ~~the court must mail notice to the parties. Any party may serve and file an~~
45 ~~opposition within 10 days after the notice is mailed or as the court specifies.~~
46

1 **(b) — Additional provisions of order**

2
3 The court's order may also provide that documents previously filed in paper form
4 may be resubmitted in electronic form.

5
6 **(c) — Filing in paper form**

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

11
12 **Rule 8.74 8.72. Responsibilities of court**

13
14 **(a) Publication of electronic filing requirements**

15
16 ~~When the court permits electronic filing it~~ The court will publish, in both electronic
17 and print formats, the court's electronic filing requirements.

18
19 **(b) Problems with electronic filing**

20
21 If the court is aware of a problem that impedes or precludes electronic filing, it
22 must promptly take reasonable steps to provide notice of the problem.

23
24 **Rule 8.75 8.73. Contracts with electronic filing service providers**

25
26 **(a) Right to contract**

- 27
28 (1) The court may contract with one or more electronic filing service providers to
29 furnish and maintain an electronic filing system for the court.
30
31 (2) If the court contracts with an electronic filing service provider, the court may
32 require electronic filers to transmit the documents to the provider.
33
34 (3) If the court contracts with an electronic service provider or the court has an
35 in-house system, the provider or system must accept filing from other
36 electronic filing service providers to the extent the provider or system is
37 compatible with them.

38
39 **(b) Provisions of contract**

40
41 The court's contract with an electronic filing service provider may allow the
42 provider to charge electronic filers a reasonable fee in addition to the court's filing
43 fee. Whenever possible, the contract should require that the electronic filing service
44 provider agree to waive a fee that normally would be charged to a party when the
45 court orders that the fee be waived for that party. The contract may also allow the

1 electronic filing service provider to make other reasonable requirements for use of
2 the electronic filing system.

3
4 **(c) Transmission of filing to court**

5
6 An electronic filing service provider must promptly transmit any electronic filing
7 and any applicable filing fee to the court.

8
9 **(d) Confirmation of receipt and filing of document**

10
11 (1) An electronic filing service provider must promptly send to an electronic filer
12 its confirmation of the receipt of any document that the filer has transmitted
13 to the provider for filing with the court.

14
15 (2) The electronic filing service provider must send its confirmation to the filer's
16 electronic service address and must indicate the date and time of receipt, in
17 accordance with rule 8.77 ~~9(a)~~.

18
19 (3) After reviewing the documents, the court must arrange to promptly
20 ~~transmit to the electronic filing service provider and the electronic filer the~~
21 ~~court's confirmation of filing or notice of rejection of filing, to the electronic~~
22 filer in accordance with rule 8.77 ~~9~~.

23
24 **(e) Ownership of information**

25
26 All contracts between the court and electronic filing service providers must
27 acknowledge that the court is the owner of the contents of the filing system and has
28 the exclusive right to control the system's use.

29
30 **Rule ~~8.76~~ 8.74. Responsibilities of electronic filer**

31
32 **(a) Conditions of filing**

33
34 Each electronic filer must:

35
36 (1) Comply with any court requirements designed to ensure the integrity of
37 electronic filing and to protect sensitive personal information;

38
39 (2) Furnish information that the court requires for case processing;

40
41 (3) Take all reasonable steps to ensure that the filing does not contain computer
42 code, including viruses, that might be harmful to the court's electronic filing
43 system and to other users of that system;

44
45 (4) Furnish one or more electronic service addresses, in the manner specified by
46 the court, at which the electronic filer agrees to accept service; and

- 1
2 (5) Immediately provide the court and all parties with any change to the
3 electronic filer's electronic service address.
4

5 **(b) Format of documents to be filed electronically**
6

- 7 (1) A document that is filed electronically with the court must be in a format
8 specified by the court unless it cannot be created in that format.
9

- 10 (2) The format adopted by a court must meet the following minimum
11 requirements:
12

13 (A) The format must be text-searchable while maintaining original
14 document formatting.
15

16 (B) The software for creating and reading documents must be in the
17 public domain or generally available at a reasonable cost.
18

19 (C) The printing of documents must not result in the loss of document
20 text, format, or appearance.
21

- 22 (3) The page numbering of a document filed electronically must begin with the
23 first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2,
24 3). The page number may be suppressed and need not appear on the cover
25 page.
26

- 27 (4) If a document is filed electronically under the rules in this article and cannot
28 be formatted to be consistent with a formatting rule elsewhere in the
29 California Rules of Court, the rules in this article prevail.
30

31 **Rule 8.77 8.75. Requirements for signatures on documents**
32

33 **(a) Documents signed under penalty of perjury**
34

35 If a document to be filed electronically must be signed under penalty of perjury, the
36 following procedure applies:
37

- 38 (1) The document is deemed signed by the declarant if, before filing, the
39 declarant has signed a printed form of the document.
40
41 (2) By electronically filing the document, the electronic filer certifies that (1) has
42 been complied with and that the original signed document is available for
43 inspection and copying at the request of the court or any other party.
44

- 1 (3) At any time after the document is filed, any other party may serve a demand
2 for production of the original signed document. The demand must be served
3 on all other parties but need not be filed with the court.
4
- 5 (4) Within five days of service of the demand under (3), the party on whom the
6 demand is made must make the original signed document available for
7 inspection and copying by all other parties.
8
- 9 (5) At any time after the document is filed, the court may order the filing party to
10 produce the original signed document in court for inspection and copying by
11 the court. The order must specify the date, time, and place for the production
12 and must be served on all parties.
13

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

16 If a document does not require a signature under penalty of perjury, the document
17 is deemed signed by the party if the document is filed electronically.
18

19 **(c) Documents requiring signatures of multiple parties**
20

21 When a document to be filed electronically, such as a stipulation, requires the
22 signatures of multiple parties, the following procedure applies:
23

- 24 (1) The party filing the document must obtain the signatures of all parties either
25 in the form of an original signature on a printed form of the document or in
26 the form of a copy of the signed signature page of the document. By
27 electronically filing the document, the electronic filer indicates that all parties
28 have signed the document and that the filer has the signatures of all parties in
29 a form permitted by this rule in his or her possession.
30
- 31 (2) The party filing the document must maintain the original signed document
32 and any copies of signed signature pages and must make them available for
33 inspection and copying as provided in (a)(2). The court and any other party
34 may demand production of the original signed document and any copies of
35 signed signature pages in the manner provided in (a)(3)–(5).
36

37 **(d) Digital signature**
38

39 A party is not required to use a digital signature on an electronically filed
40 document.
41

42 **(e) Judicial signatures**
43

44 If a document requires a signature by a court or a judicial officer, the document
45 may be electronically signed in any manner permitted by law.
46

1 **Rule ~~8.78~~ 8.76. Payment of filing fees**

2
3 **(a) Use of credit cards and other methods**

4
5 The court may permit the use of credit cards, debit cards, electronic fund transfers,
6 or debit accounts for the payment of filing fees associated with electronic filing, as
7 provided in Government Code section 6159 and other applicable law. The court
8 may also authorize other methods of payment.
9

10 **(b) Fee waivers**

11
12 Eligible persons may seek a waiver of court fees and costs, as provided in
13 Government Code section 68634.5 and rule 8.26.
14

15 **Advisory Committee Comment**

16
17 **Subdivision (b).** A fee charged by an electronic filing service provider under
18 rule ~~8.75(b)~~ 8.73(b) is not a court fee that can be waived under Government Code section 68634.5
19 and rule 8.26.
20

21 **Rule ~~8.79~~ 8.77. Actions by court on receipt of electronic filing**

22
23 **(a) Confirmation of receipt and filing of document**

24
25 **(1) *Confirmation of receipt***

26
27 When the court receives an electronically submitted document, the court
28 must arrange to promptly send the electronic filer confirmation of the court's
29 receipt of the document, indicating the date and time of receipt. A document
30 is considered received at the date and time the confirmation of receipt is
31 created.
32

33 **(2) *Confirmation of filing***

34
35 If the document received by the court under (1) complies with filing
36 requirements, the court must arrange to promptly send the electronic filer
37 confirmation that the document has been filed. The filing confirmation must
38 indicate the date and time of filing and is proof that the document was filed
39 on the date and at the time specified. The filing confirmation must also
40 specify:
41

42 **(A)** Any transaction number associated with the filing; and

43
44 **(B)** The titles of the documents as filed by the court; ~~and~~

45
46 ~~**(C)** The fees assessed for the filing.~~
47

1 (3) *Transmission of confirmations*

2
3 The court must arrange to send receipt and filing confirmation to the
4 electronic filer at the electronic service address that the filer furnished to the
5 court under rule 8.764(a)(4). The court or the electronic filing service
6 provider must maintain a record of all receipt and filing confirmations.
7

8 (4) *Filer responsible for verification*

9
10 In the absence of ~~the court's~~ confirmation of receipt and filing, there is no
11 presumption that the court received and filed the document. The electronic
12 filer is responsible for verifying that the court received and filed any
13 document that the electronic filer submitted to the court electronically.
14

15 (b) **Notice of rejection of document for filing**

16
17 If the clerk does not file a document because it does not comply with applicable
18 filing requirements, the court must arrange to promptly send notice of the rejection
19 of the document for filing to the electronic filer. The notice must state the reasons
20 that the document was rejected for filing.
21

22 (c) **Document received after close of business**

23
24 A document that is received electronically by the court after 11:59 p.m. is deemed
25 to have been received on the next court day.
26

27 (d) **Delayed delivery**

28
29 ~~If a technical problem with a court's electronic filing system prevents the court~~
30 ~~from accepting an electronic filing on a particular court day, and the electronic filer~~
31 ~~demonstrates that he or she attempted to electronically file the document on that~~
32 ~~day, the court must deem the document as filed on that day.~~
33

34 If a filer fails to meet a filing deadline imposed by court order, rule, or statute
35 because of a failure at any point in the electronic transmission and receipt of a
36 document, the filer may file the document on paper or electronically as soon
37 thereafter as practicable and accompany the filing with a motion to accept the
38 document as timely filed. For good cause shown, the court may enter an order
39 permitting the document to be filed nunc pro tunc to the date the filer originally
40 sought to transmit the document electronically.
41

42 (e) **Endorsement**

- 43
44 (1) The court's endorsement of a document electronically filed must contain the
45 following: "Electronically filed by [Name of Court], on _____ (date)," followed by the name of the court clerk.
46

- 1
2 (2) The endorsement required under (1) has the same force and effect as a
3 manually affixed endorsement stamp with the signature and initials of the
4 court clerk.
5
6 (3) A record on appeal, brief, or petition in an appeal or original proceeding that
7 is filed and endorsed electronically may be printed and served on the
8 appellant or respondent in the same manner as if it had been filed in paper
9 form.
10

11 **Rule ~~8.74~~ 8.78. Electronic service**

12
13 **(a) Authorization for electronic service; exceptions**
14

- 15 (1) A document may be electronically served under these rules:
16
17 (A) If electronic service is provided for by law or court order; or
18
19 (B) If the recipient agrees to accept electronic services as provided by these
20 rules and the document is otherwise authorized to be served by mail,
21 express mail, overnight delivery, or fax transmission.
22
23 (2) A party indicates that the party agrees to accept electronic service by:
24
25 (A) Serving a notice on all parties that the party accepts electronic service
26 and filing the notice with the court. The notice must include the
27 electronic service address at which the party agrees to accept service; or
28
29 (B) Electronically filing any document with the court. The act of electronic
30 filing ~~is evidence that the party~~ shall be deemed to show that the
31 party agrees to accept service at the electronic service address that the
32 party has furnished to the court under rule 8.764(a)(4), unless the party
33 serves a notice on all parties and files the notice with the court that the
34 party does not accept electronic service and chooses instead to be
35 served paper copies at an address specified in the notice.
36
37 ~~(3) A party that has consented to electronic service under (2) and has used an~~
38 ~~electronic filing service provider to serve and file documents in a case~~
39 ~~consents to service on that electronic filing service provider as the designated~~
40 ~~agent for service for the party in the case, until such time as the party~~
41 ~~designates a different agent for service.~~
42
43 ~~(4)~~ (3) A document may be electronically served on a nonparty if the nonparty
44 consents to electronic service or electronic service is otherwise provided for
45 by law or court order. All provisions of this rule that apply or relate to a
46 party also apply to any nonparty who has agreed to or is otherwise required

1 by law or court order to accept electronic service or to electronically serve
2 documents.

3
4 **(b) Maintenance of electronic service lists**

5
6 When the court orders or permits electronic filing service in a case, it must
7 maintain and make available electronically to the parties an electronic service list
8 that contains the parties' current electronic service addresses as provided by the
9 parties that have filed electronically been ordered to or have consented to electronic
10 service in the case.

11
12 **(c) Service by the parties**

13
14 Notwithstanding (b), parties are responsible for electronic service on all other
15 parties in the case. A party may serve documents electronically directly, by an
16 agent, or through a designated electronic filing service provider.

17
18 **(d) Change of electronic service address**

19
20 (1) A party whose electronic service address changes while the appeal or original
21 proceeding is pending must promptly file a notice of change of address
22 electronically with the court and must serve this notice electronically on all
23 other parties.

24
25 (2) A party's election to contract with an electronic filing service provider to
26 electronically file and serve documents or to receive electronic service of
27 documents on the party's behalf does not relieve the party of its duties under
28 (1).

29
30 ~~(3) An electronic service address is presumed valid for a party if the party files~~
31 ~~electronic documents with the court from that address and has not filed and~~
32 ~~served notice that the address is no longer valid.~~

33
34 **(e) Reliability and integrity of documents served by electronic notification**

35
36 A party that serves a document by means of electronic notification must:

37
38 (1) Ensure that the documents served can be viewed and downloaded using the
39 hyperlink provided;

40
41 (2) Preserve the document served without any change, alteration, or modification
42 from the time the document is posted until the time the hyperlink is
43 terminated; and

44
45 (3) Maintain the hyperlink until the case is final.
46

1 **(f) Proof of service**

2
3 (1) Proof of electronic service may be by any of the methods provided in Code of
4 Civil Procedure section 1013a, ~~except that the proof of service must state~~
5 with the following exceptions:

6
7 (A) The proof of electronic service does not need to state that the person
8 making the service is not a party to the case.

9
10 (B) The proof of electronic service must state:

11
12 (i) The electronic service address of the person making the service, in
13 addition to that person's residence or business address;

14
15 ~~(B)~~ (ii) The date ~~and time~~ of the electronic service, instead of the date and
16 place of deposit in the mail;

17
18 ~~(C)~~ (iii) The name and electronic service address of the person served, in
19 place of that person's name and address as shown on the envelope; and

20
21 ~~(D)~~ (iv) That the document was served electronically, in place of the
22 statement that the envelope was sealed and deposited in the mail with
23 postage fully prepaid.

24
25 (2) Proof of electronic service may be in electronic form and may be filed
26 electronically with the court.

27
28 (3) The party filing the proof of electronic service must maintain the printed
29 form of the document bearing the declarant's original signature and must
30 make the document available for inspection and copying on the request of the
31 court or any party to the action or proceeding in which it is filed, in the
32 manner provided in rule 8.77~~(e)~~75.

33
34 **(g) Electronic service by or on court**

35
36 (1) The court may electronically serve any notice, order, opinion, or other
37 document issued by the court in the same manner that parties may serve
38 documents by electronic service.

39
40 (2) A document may be electronically served on a court if the court consents to
41 electronic service or electronic service is otherwise provided for by law or
42 court order. A court indicates that it agrees to accept electronic service by:

43
44 (A) Serving a notice on all parties that the court accepts electronic service.
45 The notice must include the electronic service address at which the
46 court agrees to accept service; or

- 1
2 (B) Adopting a local rule stating that the court accepts electronic service.
3 The rule must indicate where to obtain the electronic service address at
4 which the court agrees to accept service.
5

6 **Rule ~~8.73~~ 8.79. Court order requiring electronic service ~~or filing~~**
7

8 **(a) Court order**
9

- 10 (1) The court may, on the motion of any party or on its own motion, provided
11 that the order would not cause undue hardship or significant prejudice to any
12 party, order some or all parties to do either or both of the following:
13

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

17 (B) ~~File all~~ Accept electronic service of documents; ~~electronically; or~~
18

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

- 22 (2) The court will not:
23

24 (A) Order a self-represented party to electronically serve ~~or file~~ or accept
25 electronic service of documents; or
26

27 (B) ~~Order a party to electronically serve or file documents if the party~~
28 ~~would be required to pay a fee to an electronic filing service provider to~~
29 ~~file or serve the documents and the party objects to paying this fee in its~~
30 ~~opposition to the motion under (1); or~~
31

32 ~~(C)~~ Order a trial court to electronically serve ~~or file~~ documents.
33

- 34 (3) If the reviewing court proposes to make an order under (1) on its own motion,
35 the court must mail notice to the parties. Any party may serve and file an
36 opposition within 10 days after the notice is mailed or as the court specifies.
37

38 ~~(b) Additional provisions of order~~
39

40 The court's order may also provide that documents previously filed in paper form
41 may be resubmitted in electronic form.
42

43 ~~(c)~~ **(b) Filing Serving in paper form**
44

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

4 5 **Chapter 2. Civil Appeals**

6 7 **Article 3. Briefs in the Court of Appeal**

8 9 **Rule 8.204. Contents and form of briefs**

10
11 **(a) * * ***

12 13 **(b) Form**

- 14
- 15 (1) A brief may be reproduced by any process that produces a clear, black image
16 of letter quality. All documents filed must have a page size of 8½ by 11
17 inches. If filed in paper form, the paper must be white or unbleached and of at
18 least 20-pound weight.
- 19
- 20 (2) Any conventional font may be used. The font may be either proportionally
21 spaced or monospaced.
- 22
- 23 (3) The font style must be roman; but for emphasis, italics or boldface may be
24 used or the text may be underscored. Case names must be italicized or
25 underscored. Headings may be in uppercase letters.
- 26
- 27 (4) Except as provided in (11), the font size, including footnotes, must not be
28 smaller than 13-point, and both sides of the paper may be used.
- 29
- 30 (5) The lines of text must be unnumbered and at least one-and-a-half-spaced.
31 Headings and footnotes may be single-spaced. Quotations may be block-
32 indented and single-spaced. Single-spaced means six lines to a vertical inch.
- 33
- 34 (6) The margins must be at least 1½ inches on the left and right and 1 inch on the
35 top and bottom.
- 36
- 37 (7) The pages must be consecutively numbered. ~~The tables and the body of the~~
38 ~~brief may have different numbering systems. The page numbering must begin~~
39 with the cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3).
40 The page number may be suppressed and need not appear on the cover page.
- 41
- 42 (8) If filed in paper form, the brief must be ~~bound on the left margin filed~~
43 unbound unless otherwise provided by local rule or court order. If the brief is
44 ~~stapled, the bound edge and staples must be covered with tape.~~
- 45
- 46 (9) The brief need not be signed.

- 1
2 (10) If filed in paper form, the cover must be in the color prescribed by rule
3 8.40(b). In addition to providing the cover information required by rule
4 8.40(c), the cover must state:
5
6 (A) The title of the brief;
7
8 (B) The title, trial court number, and Court of Appeal number of the case;
9
10 (C) The names of the trial court and each participating trial judge;
11
12 (D) The name of the party that each attorney on the brief represents.
13
14 (11) If the brief is produced on a typewriter:
15
16 (A) A typewritten original and carbon copies may be filed only with the
17 presiding justice's permission, which will ordinarily be given only to
18 unrepresented parties proceeding in forma pauperis. All other
19 typewritten briefs must be filed as photocopies.
20
21 (B) Both sides of the paper may be used if a photocopy is filed; only one
22 side may be used if a typewritten original and carbon copies are filed.
23
24 (C) The type size, including footnotes, must not be smaller than standard
25 pica, 10 characters per inch. Unrepresented incarcerated litigants may
26 use elite type, 12 characters per inch, if they lack access to a typewriter
27 with larger characters.
28
29 (c)–(e) * * *

30
31 **Advisory Committee Comment**
32

33 * * *
34

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
1.	California Appellate Court Clerks Association by Kevin Lane, President	AM	See comments on specific provisions below.	
2.	California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	AM	See comments on specific provisions below.	
3.	California Court Reporters Association by Karen Kronquest, Director, Division B	AM	See comments on specific provisions below.	
4.	Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	A	See comments on specific provisions below.	
5.	Orange County Bar Association by Todd G. Friedland, President	A	See comments on specific provisions below.	
6.	Santa Clara County Bar Association, Committee on Appellate Courts by Audra Ibarra and Associate Justice Miguel Marquez, Sixth District Court of Appeal, Co-Chairs	AM	See comments on specific provisions below.	
7.	Superior Court of Los Angeles County	A	No comment.	The committees note the court's support for the proposal. No response is necessary.

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
8.	Civil and Probate Managers for the Superior Court of Orange County By Bryan Chae, Principal Analyst	NI	See comments on specific provisions below.	
9.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	A	See comments on specific provisions below.	
10.	State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016	AM	See comments on specific provisions below.	
11.	State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong 2015–2016 Chair	AM	See comments on specific provisions below.	
12.	D'vora Tirschwell Writ Attorney First District Court of Appeal	AM	See comments on specific provisions below.	

SPR16-06

Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

Rule 8.71(b)(2)		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	<p>Rule 8.71 page 10 section (b) (2) Why require a notice be filed with the court that a self-rep party agrees to e-filing...the DCA's believe the same purpose would be served by the following suggested edit:</p> <p>(2) A self-represented party may agree to file documents electronically. A self-represented party agrees to file documents electronically by filing a notice with the court and serving it on the other parties. By submitting an electronic document to the court, and serving it electronically on other parties, a self-represented party agrees to electronic filing with the court.</p>	<p>Several commentators have noted that requiring a self-represented party to "opt in" to e-filing by filing and serving a notice could place an unwanted burden on both the party and the court. Although the committees were concerned in developing the proposed rule that self-represented parties not be compelled to use e-filing, nor to accept electronic service, a self-represented party will still be able, using the approach suggested by CACCA, to decide whether or not to e-file. Moreover, under the proposed language for rule 8.78 regarding e-service, a party will not be compelled to accept e-service because the party has e-filed a document. The committees therefore recommend that the language suggested by the commentator for rule 8.71 (b)(2) be adopted with the suggested change, but with the added sentence revised to read "By electronically filing any document with the court, a self-represented party agrees to file documents electronically."</p>

Rule 8.71(b)(3)		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	<p>In subsection (3), we propose to delete subsection (3) altogether as we feel it is confusing or in the alternative substituting "may" in place of "is to", and to delete "unless the self-represented party affirmatively agrees otherwise."</p> <p>Rule 8.71 (b)(3): "Committee to consider: Since there is no definition of 'non-electronic means,' should we state 'paper' documents?"</p>	<p>See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.</p>

SPR16-06**Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices** (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

Rule 8.71(b)(3)		
Commentator	Comment	Committee Response
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>Rule 8.71 page 10 section (b) (3) Why insist on filing by non-electronic means? Instead, mirror the language in the section right above wherein “may file” is used. Also we recommend a hyphen in nonelectronic, i.e., non-electronic.</p> <p>See below for revised (b) (3). Additions highlighted in yellow, deletions with strikeout.</p> <p>In cases involving both represented and self-represented parties, represented parties are required to file documents electronically; however, in these cases, each a self-represented party is to may file documents by non-electronic means unless the self-represented party affirmatively agrees otherwise.</p>	<p>The committees agree that self-represented parties in cases involving both represented and self-represented parties should be given the option of filing electronically or on paper. In response to the comment by CACCA, above, regarding the term “nonelectronic means” the committees note that the convention in the appellate rules is to use the language “in paper form” or “in paper format.” See, e.g., rule 8.40 (b).</p> <p>The committees therefore recommend that the proposed changes to rule 8.71(b)(3) be adopted with the following language:</p> <p>“In cases involving both represented and self-represented parties, represented parties are required to file documents electronically, however, in these cases, a self-represented party may file documents in paper form.”</p>

Rule 8.71(d)		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	Committee to consider: Since there is no definition for ‘conventional means,’ should we state ‘paper’?	See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>Rule 8.71 page 10 section (d)</p> <p>Delete A party must be excused from the requirement to file documents electronically if the party shows undue hardship or significant prejudice. A court must have a process for</p>	The committees, in developing the proposed rule, intended to preserve the ability of each district court of appeal to implement its own procedures for parties to apply to be excused from filing electronically. The committees therefore decline to make the suggested change, but recommend that “by conventional means” be changed to “in paper form” as

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

Rule 8.71(d)		
Commentator	Comment	Committee Response
	<p>parties, including represented parties, to apply for relief and a procedure for parties excused from filing documents electronically to file them by conventional means.</p> <p>And replace with: The court will, on the motion of a party showing of good cause or undue prejudice, excuse a party from filing documents electronically. Said motion may be filed in paper.</p> <p>The above sentence would show the process as well, i.e. by motion.</p>	suggested by CACCA.
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	<p>Self-represented parties are exempt from e-filing unless they opt-in/agree to e-file, and any party (regardless of representation) can request to be exempt from e-filing upon showing of undue hardship or significant prejudice. However, the exact process for requesting a hardship exemption is not clear and appears it would likely vary from court to court (see Rule 8.71(d)). SCDLS suggests incorporating more specificity regarding the process for requesting hardship/prejudice exemption from e-filing, for parties who are low-income or moderate-income, limited English proficient (LEP), disabled, etc., as this will make filing for exemption more readily accessible to all litigants.</p>	See response above to comment on this subsection by the California Court of Appeal, Second Appellate District.

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Rule 8.72(a)		
Commentator	Comment	Committee Response
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>Rule 8.72 (a) page 12 and 13</p> <p>WHY require us to publish the already published rules? Rule 8.71 (a) states E-filing is mandatory. This is a holdover from the days when court had to mandate e-filing. In addition, if a court requires any variations of e-filing, it will do so by local rule, which is already covered and already requires publication. DELETE section (a) shown below and renumber (b) Problems with electronic filing to (a)</p> <p>(a)Publication of electronic filing requirements When the court permits electronic filing it The court will publish, in both electronic and print formats, the court's electronic filing requirements.</p> <p>New (a) Problems with electronic filing</p>	<p>8.72 (a): The language of proposed rule 8.72(a) is taken directly from existing rule 8.74(a), changed only to reflect that e-filing is now mandatory in all of the courts of appeal. The requirement for each court to publish its own local e-filing requirements reiterates, in the context of the general rules for appellate e-filing, the generally applicable requirement that the courts of appeal publish whatever specific local requirements they may impose. The committees therefore decline to make the suggested change.</p>

Rule 8.73(b)		
Commentator	Comment	Committee Response
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>8.73 (b) page 13 Insert "filing" before fee in line 30, on page 13 as shown below highlighted in yellow.</p> <p>The court's contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. <u>The contract may require that the electronic filing service</u></p>	<p>The intent of the proposed language is to allow the court to order the waiver of an electronic service provider's fee, if the contract so allows. The proposed addition of the word "filing" would impose such waivers across the board whenever a court orders the waiver of a filing fee. The committee declines the suggested change, and recommends that the proposed amended language of rule 8.73(b) be adopted without this change, giving courts the discretion to order the waiver of an electronic service</p>

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Rule 8.73(b)		
Commentator	Comment	Committee Response
	<u>provider agree to waive a fee that normally would be charged to a party when the court orders that the filing fee be waived for that party.</u> The contract may also allow the electronic filing service provider to make other reasonable requirements for use of the electronic filing system.	provider's fee, or not, as a separate decision from the decision to waive the court's filing fee. Please see response, below, to comment by the Family Violence Appellate Project, for language recommended by the committees to be added to the changes to this subsection.
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	Finally, permitting electronic filing service providers to charge additional fees for e-filing could pose a barrier to low or moderate-income litigants. Though the rules do also provide that the court can order this fee be waived in certain circumstances, it is unclear what these circumstances would be (see Rule 8.73(b)). SCDLS suggests setting forth specifics regarding the circumstances under which a court may order that the additional fee charged by electronic filing service providers be waived, as this will also make e-filing more accessible to all litigants. It is good that the rule clarifies that electronic filing would no longer automatically be considered consent to accept electronic service, and parties can choose to receive service of documents in paper form, which would be helpful to parties who are self-represented or low-income (see Rule 8.78).	With regard to rule 8.73 (b), the intent of the proposed language is to allow courts, by contract, to provide that the court can order the waiver of an electronic service provider's fee in the court's discretion, as when the court has ordered the waiver of the court's filing fee due to the economic hardship it would pose for a party. The committees believe that the decision is appropriately left in the court's discretion. The committees therefore recommend that the proposed language be adopted as circulated, with the additions discussed in the response to the comments of the Family Violence Appellate Project.
Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	While exempting pro se litigants from e-filing avoids concerns that indigent pro se litigants who qualify for fee waivers will be subject to mandatory e-filing fees, we would encourage the courts to negotiate vendor contracts that provide for all litigants who qualify for fee waivers to e-file without cost and without having to submit credit card information to e-file. For many litigants, e-filing is vastly	8.73(b): The proposed language of rule 8.73(b) is intended to provide some protection for litigants who may have difficulty paying an electronic filing service provider's fee, while recognizing that the court's ability to order the waiver of such fees is subject to the court's contract with the particular provider. The committees agree that courts should be encouraged to include provisions allowing the court to order

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Rule 8.73(b)		
Commentator	Comment	Committee Response
	more convenient, time-saving, and less expensive than traditional paper filing. Currently, proposed Rule 8.73(b) provides, “. . . The contract may require that the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the fee be waived for that party.” We suggest changing the language as follows: “. . . <u>Wherever possible, t</u> The contract may <u>should</u> require that the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the fee be waived for that party.”	that fees be waived. The committees therefore recommend that the amendments to subsection 8.73(b) be adopted with the changes suggested by the Family Violence Appellate Project.

Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	Rule 8.73 (d)(3): “Since the confirmation of filing or rejection is automatically generated when the deputy either accepts or rejects the document, the DCA’s suggest the wording in red font below. The problem with this rule is if the electronic filer “unchecks” the notification box to receive these notices (confirmation of filing or rejection), they will not receive the notice and the courts will not know that it was not received.” Suggested language for rule 8.73 (d)(3): “ Following review of the documents for filing, an automatic confirmation of filing or rejection of a document is generated by the electronic filing system in compliance with rule 8.77. ”	See response below to comment on these subsections by the California Court of Appeal, Second Appellate District.

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Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	Comment	Committee Response
	<p>Rule 8.77 (a) (1), suggested language: “When the court receives an electronically submitted document, the court or the court’s service provider must promptly send the electronic filer will receive a computer generated confirmation of the receipt of the document, indicating the date and time of receipt.... filed. The filing confirmation must indicate the ...”</p> <p>Rule 8.77 (a)(2), suggested language: “If the document received by the court under (1) complies with filing requirements, the court or the court’s service provider must promptly send the electronic filer receives a computer generated confirmation”</p> <p>CACCA also submits this further comment from the Third District Court of Appeal: “How do we control what they receive? We can only control what we send. We can verify or track what we send.”</p> <p>And this further comment on rule 8.77(a)(2) from the Third District Court of Appeal: “Delete section (C) The fees assessed for the filing. The current system does not support this section.</p>	
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the	<p>8.73 (d) (3) Page 14 and 8.77 (a) (1) and (2) pages 16 and 17</p> <p>Confirmation of filings go through the current TrueFiling</p>	<p>The Third District Court of Appeal suggests that proposed rule 8.77(a)(2)(C), which rennumbers but otherwise does not change existing rule 8.79(a)(2)(C), imposes a requirement which the existing e-filing systems are not capable of meeting. To eliminate the conflict between the existing rule and current practices, the committees recommend the deletion of subsection 8.77(a)(2)(C).</p> <p>8.73(d)(3): Both the Second District Court of Appeal and CACCA suggest that the language of rule 8.73(d)(3) should reflect the actual practice of the appellate courts, which is that notice that a document has been filed or rejected is</p>

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Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	Comment	Committee Response
Court	<p>system, i.e., the emails to the electronic filer come from ImageSoft (it is part of the TrueFiling system) and are automatically generated. The court does not send an email directly to the filer. Therefore, the section in rule 8.73 (d)(3) and 8.77(a) (1) and (2) must be modified. See below for modification to rule 8.73.</p> <p>For rule 8.77, insert “or the court’s service provider”, as shown further below. Additions highlighted in yellow, deletions with strikeout.</p> <p>a) Rule 8.73, Contracts with electronic filing service providers: (d) (3)</p> <p>After reviewing the documents, the court must promptly transmit to the electronic filing service provider and the electronic filer the court’s confirmation of filing or notice of rejection in accordance with rule 8.779 to the electronic service provider, who will immediately send the notice to the electronic filer.</p> <p>b) Rule 8.77 (a) Confirmation of receipt – Page 17</p> <p>(1) When the court receives an electronically submitted document, the court or the court’s service provider must promptly send the electronic filer confirmation that the document has been filed. The filing confirmation must indicate the ...</p> <p>(2) Confirmation of filing</p>	<p>automatically generated.</p> <p>The committees note that the proposed language of rule 8.73(d)(3) is unchanged from the language of existing rule 8.75(d)(3). Moreover, the language proposed by CACCA fails to specify what the court and the electronic service provider are required to do with regard to sending notice. However, the committees agree that the rule should reflect the practice, which is that the courts do not directly notify an electronic filer of filing or rejection of a document.</p> <p>The committees therefore recommend that the proposed amendments be revised to state that the court “must arrange” to promptly give notice to the electronic filer. This language will retain the requirement of notice but provide flexibility for how the notice is delivered, now and in the future as technology changes.</p> <p>The committees recommend that the proposed amendments be revised to state that the court “must arrange” to promptly give notice to the electronic filer. This language will retain the requirement of notice but provide flexibility for how the notice is delivered.</p>

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Rule 8.73(d)(3) and Rule 8.77(a)		
Commentator	Comment	Committee Response
	If the document received by the court under (1) complies with filing requirements, the court or the court's service provider must promptly send the electronic filer confirmation	

Rule 8.74(b)		
Commentator	Comment	Committee Response
California Court Reporters Association by Karen Kronquest, Director, Division B	Rule 8.74(b) – states the format for attorneys to file electronic documents. It should also contain the minimum requirements for a reporter's transcript, including hyperlinks, etc.	The committees note that the only changes proposed to existing rule 8.76 (renumbered as rule 8.74) are to put in place a requirement that electronically filed documents be in a text searchable format, and that pagination begin with the cover or first page as 1 and use only Arabic numerals. More specific format requirements applicable to reporters' transcripts are set forth elsewhere in the rules, including in rule 8.144, and no changes to those requirements were included in the proposed changes as circulated for comment. Any potential changes to these requirements should be circulated for comment before a change is made.

Rule 8.74(b)(2)		
Commentator	Comment	Committee Response
State Bar of California, Standing Committee on the Delivery of Legal Services,by Phong S. Wong 2015–2016 Chair	Also, requiring that the format of the documents e-filed be text-searchable may pose an additional barrier to certain parties who wish to e-file such as those who are low or moderate-income, LEP, or disabled, as they may not have ready access to the technology for this (see Rule 8.74(b)). Additionally, some disabled litigants may also face	Although the committees appreciate the need to keep e-filing accessible to litigants who may find it difficult to meet specific format requirements, they proposed this new requirement with the understanding that the rules need to consider and balance the needs of the courts and the needs of litigants. Text-searchable format is important to allow efficient court review

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Rule 8.74(b)(2)		
Commentator	Comment	Committee Response
	difficulties gaining physical access to buildings where public, shared computers are available.	of documents, and software for the creation of text-searchable documents is readily available for reasonable or no cost. Parties who find this requirement too great of a barrier may request exemption from e-filing under the proposed language of rule 8.71(d).
D'vora Tirschwell Writ Attorney First District Court of Appeal	<p>Descriptive electronic bookmarking of exhibits and section headings in briefs is required by the First Appellate District's Local Rule 16. Electronic bookmarks serve the same function of index tabs in paper-filed documents, which are required by other court rules (e.g., rule 8.486(c)(1)(B)).</p> <p>Descriptive electronic bookmarks are *absolutely critical* to sifting through an electronic record, particularly in writ proceedings, which are often time-sensitive and require speedy review.</p> <p>I do not read the proposed rules as conflicting with the electronic bookmarking requirements of the First Appellate District's Local Rule 16. Because electronic bookmarks are so necessary for court staff, however, I recommend proposed rule 8.74(b)(2), which sets forth minimum requirements for the formatting of electronically-filed documents, expressly include a requirement for descriptive electronic bookmarks to the first page of each exhibit and each section heading in a brief. I further suggest that descriptive electronic bookmarks be defined as including not only the exhibit number or letter as indicated in a required index of contents, but also a short description of the document (such as Exh. 1-Notice of MSJ).</p>	<p>The committees considered including specific requirements for bookmarking of electronic documents in this proposal. However, because some of the courts of appeal have only recently begun using e-filing, the committees decided to wait until all of the courts of appeal have had more experience with e-filing, and better know what bookmarking requirements work best for them, before moving towards a statewide rule on this topic.</p>

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Rule 8.74(b)(3)		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	Comment on Second District Court of Appeal’s proposed change to rule 8.74 (b)(3): “Agreed – the DCA’s really like the addition of ‘may be suppressed’!”	8.74(b)(3): See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	8.74 (b) (3) page 15 a) Insert “may be suppressed and” in line 11. The page numbering of a document filed electronically must begin with the first page or cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3). The page number may be suppressed and need not appear on the cover page.	8.74(b)(3): Both the Second District Court of Appeal and CACCA recommend the addition of the phrase “may be suppressed” to the language proposed for rule 8.74(b)(3). The committees note that the language for rule 8.74 (b)(3) is taken from the parallel rule proposed for the trial courts, in rules 2.109, 3.1110 and 3.1113 as proposed to be amended in proposal SPR16-25. However, the language need not be identical to the language that will be used in the trial court rules. The committees therefore recommend that the proposed amendments to rule 8.74(b)(3) be revised to add the words “may be suppressed and” after “page number,” as suggested by the Second District Court of Appeal.
California Court Reporters Association by Karen Kronquest, Director, Division B	Rule 8.74(b)(3) – states the cover does not need a page number. In order to file a reporter’s transcript electronically it needs to have a page number on every single page, otherwise the pagination will be incorrect when uploading.	The committees note that the intent of the new requirement for pagination is to ensure that the pagination of an electronically filed document match the pagination shown on the document, with the first page (or cover, if there is one) as page 1 and then all further pages numbered with consecutive Arabic numerals. Although the page number may be suppressed on the cover or first page, that page will be required to be page 1. (See response, above, to comments by Court of Appeal for the Second Appellate District for discussion of exact language to be used.)

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Rule 8.75(d)		
Commentator	Comment	Committee Response
California Court Reporters Association by Karen Kronquest, Director, Division B	Rule 8.75(d)- digital signature not required. You must have a digital signature on a reporter's transcript otherwise it enables someone to change the text without anyone every knowing it. The digital signature that we use lets you know that it has been changed, on what date, and who did it.	The committees note that this language remains unchanged from existing rule 8.77. The intent was not to make a substantive change at this time as to when a digital signature is required. The committees recommend that the amendments, which simply renumber the rule, be adopted as circulated for comment.

Rule 8.78(a)(2)		
Commentator	Comment	Committee Response
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	8.78 (a) (2) (b) page 19 Opposed to the deletion of section (a)(2)(b). Currently this rule works and there is no advantage to removing it. Instead it would cause more work, trouble, and cost for all concerned. Electronically filing any document with the court. The act of electronic filing is evidence that the party agrees to accept service at the electronic service address that the party has furnished to the court under rule 8.76(a)(4).	Please see response to comment by Santa Clara County Bar Association Committee on Appellate Courts.
Santa Clara County Bar Association, Committee on Appellate Courts by Audra Ibarra and Associate Justice Miguel Marquez, Sixth District Court of Appeal, Co-	The proposed rule would, among other things, permit parties to choose between receiving documents electronically or in hard copy. The SCCBA Committee suggests that rather than offering a procedure for "opting into" electronic service, the rule should offer a procedure for "opting out" of electronic service. An "opt out" option	The committees' intent, in drafting the changes to the rule regarding e-service, was to separate out parties' decisions regarding use of e-filing and acceptance of e-service. With some exceptions, parties will be mandated to use e-filing under the proposed changes to the rules. Rule 8.78(a)(3) was proposed to be deleted because using e-filing to establish

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Rule 8.78(a)(2)		
Commentator	Comment	Committee Response
Chairs	<p>would be both more efficient and more effective because most parties prefer electronic service and are unlikely to choose paper service.</p> <p>Under the current rule, a party that electronically files documents is presumed to agree to accept electronic service. (See Cal. Rules of Court, rule 8.71(a)(2)(B).) This presumption is appropriate because most parties that can file documents electronically prefer to receive electronic service. Electronic service is quicker than service of paper copies by mail or by courier. It allows counsel who are traveling to access the documents before returning to their offices, and avoids the need to convert paper copies to electronic form in order to distribute the document to clients and colleagues.</p> <p>The Information Technology Advisory Committee's proposal does not suggest that there have been any significant problems with electronic service or that electronic service unfairly disadvantages some parties. Instead, the proposal's objective appears to be to provide parties wishing to receive paper copies with the option of doing so. Currently, parties lack this option because under the current rule the presumption that a party electronically filing documents has agreed to electronic service is both automatic and absolute. The SCCBA Committee supports giving parties who prefer to receive documents in paper form this option. But the SCCBA Committee's suggestion would provide this option more efficiently. An "opt out" requirement, as opposed to the proposed "opt-in" requirement, would substantially reduce the number of</p>	<p>acceptance of e-service would, with mandated e-filing, give parties no choice as to whether to accept e-service.</p> <p>However, several commentators have expressed concern that requiring a party to file and serve a notice of acceptance of e-service is unduly burdensome on parties and the courts. The committees agree that an opt-out provision, as suggested by the Santa Clara Bar Association Committee on Appellate Courts (SCBACAC), to allow parties, now mandated to e-file, to decide whether to accept e-service.</p> <p>The committees therefore recommend that the proposed amendments to rule 8.78(a) be revised to include the language suggested by SCBACAC, with the suggested phrase "hard copies" changed to "paper copies."</p>

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Rule 8.78(a)(2)		
Commentator	Comment	Committee Response
	<p>notices to be filed, and the burden on the courts and the parties. It would also help avoid confusion in multi-party cases in which only one or two of the many parties wish to be served by paper.</p> <p>The SCCBA Committee recommends that the proposed Rule 8.78 be revised to maintain the current rule's presumption that parties filing documents electronically agree to electronic service, and to add a procedure for "opting out" of electronic service, as follows:</p> <p>(a) Authorization for electronic service; exception</p> <p>(1) A document may be electronically served under these rules:</p> <p style="padding-left: 40px;">(A) If electronic service is provided for by law or court order; or</p> <p style="padding-left: 40px;">(B) If the recipient agrees to accept electronic service as provided by these rules and that document is otherwise authorized to be served by mail, express mail, overnight delivery or fax transmission.</p> <p>(2) A party indicates that the party agrees to accept electronic service by;</p> <p style="padding-left: 40px;">(A) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the parties agrees to accept service; <u>or</u></p>	

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Rule 8.78(a)(2)		
Commentator	Comment	Committee Response
	<p><u>(B) Electronically filing any document with the court. The act of electronic filing shall be deemed to show that the party agrees to accept service at the electronic service address that the party has furnished to the court under Rule 8.74(a)(4), unless the party serves a notice on all parties and files the notice with the court that the party does not accept electronic service and prefers instead to be served hard copies at an address specified in the notice.</u></p>	
State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016	<p>The members of the Committee on Appellate Courts are divided on the advisability of the proposed change to rule 8.71(a)(2), which currently states that “[a] party indicates that the party agrees to accept electronic service” either: (A) by “[s]erving a notice on all parties that the party accepts electronic service and filing the notice with the court”; or (B) by “[e]lectronically filing any document with the court.” Proposed rule 8.78(a)(2) eliminates the presently existing alternative means of indicating agreement to accept electronic service by electronically filing any document with the court. Under the proposed rule, agreement to accept electronic service may be indicated only by serving a notice on all parties that the party accepts electronic service and filing the notice with the court.</p> <p>A majority of the members of the Committee on Appellate Courts disapprove of the proposed amendment because it is unduly burdensome. In their view, electronic service is often preferable to manual service because it is timelier, more efficient, and more reliable. Requiring parties and</p>	<p>With regard to the specific issue of whether e-filing should create a presumption of consent to acceptance of e-service, see response, above, to the comment from the Santa Clara Bar Association Committee on Appellate Courts.</p>

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Rule 8.78(a)(2)		
Commentator	Comment	Committee Response
	<p>their attorneys to file a notice in each case therefore imposes an additional step merely so they may opt-in to a regime that is generally preferred. Instead, a majority of the members of the Committee on Appellate Courts believe that rule 8.71(a)(2) should be preserved and that the onus should be on parties to opt-out of electronic service should they prefer manual service.</p> <p>The members of the Committee on Appellate Courts who disapprove of the proposed amendment to rule 8.71(a)(2) recognize that the calculus may be different with respect to self-represented parties. But even assuming that self-represented parties lack the same access to electronic forms of communication as represented parties, proposed rule 8.71(b)(1) addresses that concern by exempting self-represented parties from the requirement of filing documents electronically. Should self-represented parties agree to file documents electronically pursuant to proposed rule 8.71(b)(2) by filing a notice with the court and serving it on the other parties, it is unduly burdensome to require those self-represented parties to additionally opt-in to electronic service. Again, a majority of the members of the Committee believe a preferable approach would be to provide a method for self-represented parties who agree to file documents electronically to opt-out of electronic service in the event such parties prefer to file documents electronically but to receive them manually.</p> <p>A minority of the members of the Committee on Appellate Courts approve of the proposed amendment to rule 8.71(a)(2). The members of the Committee who approve</p>	

SPR16-06**Appellate Procedure: Ensure Consistency Between E-filing Rules and Court Practices** (amend title 8 (rules 8.70, 8.71, 8.72, 8.73, 8.74, 8.75, 8.76, 8.77, 8.78, 8.79 and 8.204))

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

Rule 8.78(a)(2)		
Commentator	Comment	Committee Response
	of the proposed amendment are concerned that those who are not sophisticated in the use of electronic communication (such as the elderly) or are without regular access to it (such as people of limited means) may accomplish an initial e-filing with the assistance of a clinic, librarian, friend, or family member without understanding the electronic service implications of the e-filing. In those circumstances, the self-represented parties would find themselves bound by rules recognizing the validity of service of documents they never actually received or reviewed.	

Rule 8.79(a)		
Commentator	Comment	Committee Response
Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	Finally, we believe that there is an “or” that should be “and/or” in proposed rule 8.739(a)(1)(A)[sic]: “Serve all documents electronically, except when personal service is required by statute or rule; or [and/or] (B) Accept electronic service of documents.”	Use of the word “or” rather than “and/or” is in accordance with the conventions of rule drafting. The committees recommend revision of the amended rule as follows, to clarify that the court may order either or both options: “The court may ... order some or all parties to do either or both of the following;”

Rule 8.204(b)		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	Rule 8.204 (b), suggested language: “If filed in paper form, the documents must be filed unbound. the cover must be in the color prescribed by rule 8.40(b). In addition to providing the cover information	8.204(b): See response below to comment on this subsection by the California Court of Appeal, Second Appellate District.

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Rule 8.204(b)		
Commentator	Comment	Committee Response
	required by rule 8.40(c), the cover or first page must state:	
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	<p>8.204 (b) Form page 23</p> <p>a) Add “may be suppressed and” to section (7) as shown below.</p> <p>The pages must be consecutively numbered. The tables and the body of the brief may have different numbering systems. <u>The page numbering must begin with the cover page as page 1 and use only Arabic numerals (e.g., 1, 2, 3).</u> <u>The page number may be suppressed and need not appear on the cover page.</u></p> <p>b) Delete Section (8). The courts want the paper copy submitted unbound.</p>	<p>8.204 (a)(7): As discussed above with regard to rule 8.74(b)(3), the committees recommend the adoption of the proposed amendment with the suggested added language.</p> <p>CACCA and the Second District both suggest elimination of the requirement set forth in rule 8.204 (b)(8) that paper briefs be bound. Although this proposed change in the format of paper briefs does not directly pertain to electronic filing, the committees note that receiving briefs unbound makes it easier for courts to scan paper briefs and convert them to electronic form. It appears that most of the appellate courts prefer to have paper briefs submitted unbound.</p> <p>As most of the appellate courts are in agreement that the existing rule 8.204(b)(8) is inconsistent with the practices and preferences of those courts, and this is a minor, non-controversial change, the committees recommend that the proposed changes to rule 8.204 be adopted as circulated, with the additional change that rule 8.204(b)(8) be amended to read: “If filed in paper form, the brief must be filed unbound unless otherwise provided by local rule or court order.”</p>

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Rule 8.204(b)		
Commentator	Comment	Committee Response
	<p>c) In section (10), delete reference to rule 8.40(b) and insert “submit unbound” as shown below. In addition, the recommendation is to delete section (b) rule 8.40 altogether. With mandatory e-filing, color requirements for the cover of documents is no longer relevant and as the majority of the courts do not require additional copies there is no need for this rule.</p> <p>If filed in paper form, file unbound. the cover must be in the color prescribed by rule 8.40(b). In addition to providing the cover information required by rule 8.40(c), the cover or first page must state:</p>	<p>The committees note that the proposed changes regarding the requirements for cover color would require a change to a rule not proposed to be amended in the proposal as circulated. The committees recommend against making such a change without the opportunity for public input.</p>

General Comments		
Commentator	Comment	Committee Response
Family Violence Appellate Project (FVAP) by Jennafer Dorfman Wagner, Esq. Director of Programs	<p>FVAP supports the proposed rules, designed to implement mandatory e-filing at all appellate courts. The proposed rules are consistent with the current appellate e-filing practices and local rules where we have participated in e-filing: the 1st, 2nd, 3rd, and 6th Districts.</p> <p>In regard to the expense of paper filing multiple bound copies, we encourage the Judicial Council to remove these requirements for litigants opting out of the e-filing system which are currently found at Rule of Court 8.212(c), so as to lessen the financial burden placed on pro se or other parties who cannot afford to participate in e-filing or for whom e-filing is not otherwise accessible. We would also</p>	<p>The committees note FVAP’s support for the proposal.</p> <p>The comment regarding the requirements of rule 8.212 suggests changes to provisions of the rules not addressed in this proposal. The committees note the comment and may consider the suggested changes in the future.</p>

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General Comments		
Commentator	Comment	Committee Response
	<p>encourage the Judicial Council to consider permitting such paper filing to be accepted by the Courts of Appeal, instead of having to be filed at the Supreme Court, which may enable pro per litigants to paper file by hand delivery, instead of going to the expense of mailing briefs.</p> <p>We would also encourage the courts to ensure that all e-filing systems are accessible to persons who utilize screen readers because of visual, hearing or mobility impairments. While opting out of the e-filing system would be permitted under the proposed rules by represented parties for whom e-filing is not accessible, access should be universal.</p>	<p>The committees note the commentator's concern regarding accessibility of e-filing.</p>
<p>Civil and Probate Managers for the Superior Court of Orange County By Bryan Chae, Principal Analyst</p>	<p>While the filing date is the day it arrives electronically, the documents are frequently not reviewed by the clerk until days later. To reduce confusion, there should be a clear delineation between filing date and when the document is considered officially filed.</p>	<p>The committees note that the language proposed for rule 8.73(d), taken from the language of existing rule 8.75(d) (with recommended changes to the language of the circulated rule as discussed above in the response to the comments of the Second District Court of Appeal to rule 8.73(d)) clearly delineates between the receipt of a document and the filing (or rejection) of that document, and requires separate notice to the filing party of each of these events.</p>
<p>State Bar of California Committee on Appellate Courts by Paul J. Killion Chair, 2015–2016</p>	<p>With one exception, the Committee on Appellate Courts supports the changes proposed by the Judicial Council's Information Technology Advisory Committee and Appellate Advisory Committee to the Rules of Court concerning e-filing. By and large, the proposed changes are designed to accomplish the goal of eliminating conflicts between appellate court local rules and the rules of court, and ensuring consistency in the e-filing practices of the Courts of Appeal where such consistency is desirable.</p>	<p>The committees note the support of the Committee on Appellate Courts, and address its specific concerns above.</p>

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General Comments		
Commentator	Comment	Committee Response
D'vora Tirschwell Writ Attorney First District Court of Appeal	Additionally, it would be helpful if electronic filers were asked not to submit exhibits individually, but rather in electronic "volumes" not exceeding 300 pages each, with consecutive page numbering. (See rule 8.486(c)(1)(A).) The submission of exhibits individually unnecessarily consumes staff time in dealing with the electronic filing.	Requiring electronically submitted exhibits to be submitted in volumes is another area where the committees determined that it would be better to wait to address the issue. When the courts have had more experience with e-filing, they will be better able to assist in development of a rule that fits their needs. In this area, there may also be technological developments that affect what the rule should be. For example, as it becomes technologically possible to transmit and review larger documents, it may be that the size of the "volumes" allowed could be greater than 300 pages.

Responses to Requests for Specific Comments		
Does the proposal appropriately address the stated purpose?		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	YES	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES	No response is necessary.
Orange County Bar Association by Todd G. Friedland, President	The proposal addresses the stated purpose.	No response is necessary.

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

Responses to Requests for Specific Comments		
Does the proposal appropriately address the stated purpose?		
Superior Court of San Diego County by Mike Roddy, Court Executive Officer	Yes	No response is necessary.
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong 2015–2016 Chair	Yes	No response is necessary.

Responses to Requests for Specific Comments		
Are the proposed rules consistent with current appellate e-filing practices and local rules?		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	YES, AS FAR AS THEY GO. MORE LATER.	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES, AS FAR AS THEY GO. In time we will need to address other format changes for e- documents.	No response is necessary.
Orange County Bar Association by Todd G. Friedland, President	The proposed rules are consistent with current appellate e-filing practices and local rules.	No response is necessary.
Superior Court of San Diego County by Mike Roddy, Court Executive Officer	Our court is just beginning e-filing. The juvenile division is far from being	The committees note the San Diego court's support of the proposal, and its reminder that some trial court divisions are not yet able to use e-filing and e-service.

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Responses to Requests for Specific Comments		
Are the proposed rules consistent with current appellate e-filing practices and local rules?		
	paperless. Our court is making small strides toward electronic filing and service in juvenile appeals. The proposed rules do exempt the trial courts from having to file or serve documents electronically. At least for now, that is an important exemption that must be included.	
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong 2015–2016 Chair	Yes.	No response is necessary.

Responses to Requests for Specific Comments		
Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	YES	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES	No response is necessary.
Orange County Bar Association by Todd G. Friedland, President	The rules provide protections for parties who are unable to efile.	No response is necessary.

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Responses to Requests for Specific Comments

Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?

Commentator	Comment	Committee Response
State Bar of California, Standing Committee on the Delivery of Legal Services, by Phong S. Wong 2015–2016 Chair	<p>Yes, in part. Self-represented parties are exempt from e-filing unless they opt-in/agree to e-file, and any party (regardless of representation) can request to be exempt from e-filing upon showing of undue hardship or significant prejudice. However, the exact process for requesting a hardship exemption is not clear and appears it would likely vary from court to court (see Rule 8.71(d)). SCDLS suggests incorporating more specificity regarding the process for requesting hardship/prejudice exemption from e-filing, for parties who are low-income or moderate-income, limited English proficient (LEP), disabled, etc., as this will make filing for exemption more readily accessible to all litigants.</p> <p>Also, requiring that the format of the documents e-filed be text-searchable may pose an additional barrier to certain parties who wish to e-file such as those who are low or moderate-income, LEP, or disabled, as they may not have ready access to the technology for this (see Rule 8.74(b)). Additionally, some disabled litigants may also face difficulties gaining physical access to buildings where public, shared computers are available.</p>	<p>On the issue of providing a specific procedure to request an exemption from e-filing, please see response, above, in the section on rule 8.71(d), to the comments of the Second District Court of Appeal.</p> <p>On the issue of requiring electronically filed documents to be in a text searchable format, please see response, above, in the section on rule 8.74(b)(2).</p> <p>On the issue of when a court may order waiver of an electronic filing service provider's fee, please see response, above, in the section on rule 8.73(b).</p>

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Responses to Requests for Specific Comments

Do the proposed rules provide adequate protections for parties who are unable to use e-filing or e-service?

Commentator	Comment	Committee Response
	Finally, permitting electronic filing service providers to charge additional fees for e-filing could pose a barrier to low or moderate-income litigants. Though the rules do also provide that the court can order this fee be waived in certain circumstances, it is unclear what these circumstances would be (see Rule 8.73(b)). SCDLS suggests setting forth specifics regarding the circumstances under which a court may order that the additional fee charged by electronic filing service providers be waived, as this will also make e-filing more accessible to all litigants. It is good that the rule clarifies that electronic filing would no longer automatically be considered consent to accept electronic service, and parties can choose to receive service of documents in paper form, which would be helpful to parties who are self-represented or low-income (see Rule 8.78).	

Responses to Requests for Specific Comments

Specific comments are invited on the proposed language to be added in rule 8.78, making nonparties who agree to or are ordered to e-service subject to the rule.

Commentator	Comment	Committee Response
State Bar of California, Standing Committee on the Delivery of Legal	The proposed language seems fine, as nonparties are not automatically subject to e-	No response is necessary.

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Responses to Requests for Specific Comments

Specific comments are invited on the proposed language to be added in rule 8.78, making nonparties who agree to or are ordered to e-service subject to the rule.

Commentator	Comment	Committee Response
Services,by Phong S. Wong 2015–2016 Chair	service.	

Responses to Requests for Specific Comments (from Courts)

Are the proposed amended rules consistent with current appellate e-filing practices and local rules?

Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	YES AS FAR AS THEY GO. MORE LATER.	No response is necessary.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	YES AS FAR AS THEY GO. See above.	No response is necessary.

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Responses to Requests for Specific Comments (from Courts)		
Would the proposal provide cost savings? If so please quantify.		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	SOME BUT NOT THE DELETION OF SECTION (a)(3) FROM NEW RULE 8.78 (CURRENT 8.71).	See response above to the Santa Clara Bar Association's Committee on Appellate Courts' comment on section 8.78 (a).
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	SOME BUT NOT THE DELETION OF SECTION (a)(3) FROM NEW RULE 8.78 (CURRENT 8.71).	See response above to the Santa Clara Bar Association's Committee on Appellate Courts' comment on section 8.78 (a).

Responses to Requests for Specific Comments (from Courts)		
What would the implementation requirements be for courts?		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	A DMS.	As the proposed changes are intended to bring the rules up to date and to bring the rules into alignment with current practices of the appellate courts, the committees expect that the courts will be able to implement the changes using existing resources.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	A DMS.	As the proposed changes are intended to bring the rules up to date and to bring the rules into alignment with current practices of the appellate courts, the committees expect that the courts will be able to implement the changes using existing resources.

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Responses to Requests for Specific Comments (from Courts)		
Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?		
Commentator	Comment	Committee Response
California Appellate Court Clerks Association by Kevin Lane, President	NO	The committees expect that any changes in existing procedures required to implement the amended rules will be minor, and does not recommend delaying the effective date of the changes.
California Court Of Appeal, Second Appellate District by Joseph Lane, Clerk/Executive Officer of the Court	NO	The committees expect that any changes in existing procedures required to implement the amended rules will be minor, and does not recommend delaying the effective date of the changes.